

**THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION**

**Civil No:** \_\_\_\_\_

<b>THE ERAS GROUP, INC.</b>	)	
	)	
<b>Plaintiff</b>	)	
	)	
<b>v.</b>	)	<b>COMPLAINT</b>
	)	
<b>FREE FLO WATER RECYCLING SYSTEMS, LLC and MARK C. URBAN</b>	)	
	)	
<b>Defendant.</b>	)	

Plaintiff The ERAS Group, Inc. complains of Defendants as follows:

**PARTIES**

1. The ERAS Group, Inc. (“ERAS”) is a North Carolina corporation with its principle place of business in Cary, North Carolina.
2. From the public records of the state of North Carolina, and on information and belief, Free Flow Water Recycling Systems, LLC (“Free Flow”) is a North Carolina company having its principle place of business in Youngsville, North Carolina with a registered agent Denell Urban at 894 Holden Road, Youngsville, NC, 27596.
3. On information and belief, Mark C. Urban is a resident of Wake Forest, North Carolina, and a member and owner of Free Flow.
4. From public records of the United States Patent and Trademark Office, and on information and belief, Mark Urban owns United States Patent No. 7,207,748. A copy of the ‘748 patent is attached hereto as Exhibit A.

## **JURISDICTION AND VENUE**

5. This action arises under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02, the Patent Act, 35 U.S.C. §§ 1 *et seq.*, the Lanham Act, 15 U.S.C. § 1051 *et seq.*, and N.C. Gen. Stat. §75-1.1, to resolve actual and justiciable controversies now existing between the parties within the jurisdiction of this court.

6. ERAS seeks a declaratory judgment that it does not infringe the '748 patent, that it does not infringe any trademark rights of Defendants, and that ERAS has not otherwise violated the rights of Defendants as they allege.

7. This Court has subject matter over this dispute pursuant to 28 U.S.C. §§1331, 1338, 1367, and 2201. This Court has personal jurisdiction over Defendant Free Flow by reason of its existence as a North Carolina corporation having its principle place of business in this judicial district and over Mark Urban based on his residing and conducting business in this judicial district.

8. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(b) and (c).

## **ALLEGATIONS**

9. ERAS sells rain water collection and storage systems and had been doing so for years prior to associating with Defendants.

10. Free Flow sells and installs rainwater collection and storage systems for residential and commercial uses. From the public records of the State of North Carolina, and on information and belief, Free Flow was formed on and has been doing business since June 10, 2008.

11. On information and belief, prior to June 10, 2008, Mr. Urban did business in his individual capacity as "Free-Flow."

12. In approximately October 2007, ERAS through its President Tom VanZeeland met Mr. Urban. At that time, Mr. Urban was marketing a water collection and distribution system that included a pre-mix basin, upstream from a rainwater reservoir, in which additives could be mixed for storage in and dispensing from the reservoir. That system was the invention disclosed in and covered by the claims of the '748 patent.

13. As of October 2007, Mr. Urban had not sold or installed for anyone other than himself even one of his water collection and distribution systems with a pre-mix basin.

14. In late 2007, Mr. VanZeeland advised Mr. Urban that his Free Flow water collection and distribution system was too expensive and that it should consist of fewer components with a simpler and refined user interface. Mr. VanZeeland further recommended that Mr. Urban simplify the system by removing the mixing reservoir and functionality and having the system simply collect and distribute rainwater.

15. Mr. Urban heeded Mr. VanZeeland's advice and redesigned the system by approximately January 2008. The redesigned system was not covered by any of the claims of the '748 patent.

16. In January 2008, Mr. VanZeeland requested Mr. Urban to be the original equipment manufacturer, i.e. OEM, the redesigned water collection system for ERAS and brand it as "RainEscape" for ERAS. Mr. VanZeeland advised that he wanted to install the redesigned system at a local tradeshow, specifically the WRAL concept house, and then add the redesigned product under the RainEscape mark to ERAS' product offerings.

17. Thereafter, ERAS paid to be a sponsor of the WRAL concept house and in response to Mr. VanZeeland's request, Mr. Urban provided the redesigned water collection system for installation at the concept house. Mr. Urban also privately labeled the system "Rain-

Flo” for Mr. VanZeeland.

18. After the trade show, Mr. Urban sold one of the redesigned water collection systems under the Rain-Flo mark to ERAS, who then resold and installed the system for a third party.

19. In July 2007, after forming Free Flow Water Recycling Systems, LLC, Mr. Urban informed ERAS that he would no longer manufacture the water collection system for ERAS and terminated all further business dealings with ERAS.

20. Since July 2007, Mr. Urban has demanded that ERAS discontinue marketing, selling, and installing the redesigned water collection system.

21. Since July 2007, ERAS has further improved the redesigned water collection system and presently markets and sells the system under the “Aquaeras” brand.

22. Since July 2007, Defendants have accused ERAS of violating federal statutes and state common law to include accusing ERAS of infringing Mr. Urban’s patent, Free Flow’s trademark, interfering with business and potential business relations, fraudulent misrepresentations, and unfair and deceptive business practices. A true and accurate copy of a recent cease and desist letter from counsel for Defendants is attached hereto as Exhibit B. Defendant’s accusations are false.

23. Defendant’s legal demands and threats have given ERAS a reasonable apprehension of imminent legal action and have disrupted and interfered with ERAS’ ability to offer and sell its Aquaeras product line and services without risk of incurring potential liability.

24. On information and belief, since terminating their business dealings with ERAS in July 2008, Defendants have communicated false and misleading statements about ERAS to consumers for purposes of harming the reputation of ERAS and diverting sales away from ERAS

and to Defendants.

25. On information and belief, Mr. Urban and other agents of and for Free Flow have told consumers that by selling and installing ERAS' water collection system, ERAS violates the rights of Free Flow, to include Mr. Urban's patent rights. On further information and belief, Defendants have told consumers that ERAS defrauded and otherwise wronged Free Flow. Defendants statements are false and made with malice for purposes of harming the business and reputation of ERAS.

26. On Saturday, September 27, 2008, ERAS sponsored a booth at a trade show in Raleigh, North Carolina. In the course of presenting the Aquaeras water collection system to a potential customer, Mr. Urban entered ERAS' booth, interrupted the presentation, and in the presence of an ERAS salesperson informed the potential customer that ERAS "stole my product." Mr. Urban then brought the customers to Free Flow's booth and presented his competing product. On information and belief, Free Flow then sold its good and services to the customers.

27. ERAS has never stolen any product from Defendants.

**COUNT 1**  
**DECLARATORY JUDGMENT**

28. Plaintiff realleges paragraphs 1 through 27.

29. Plaintiff has not infringed and does not infringe any claim of the '748 patent, either literally or under the doctrine of equivalents, nor has it contributed to infringement by others, nor actively induced others to infringe any claim of the '748 patent.

30. Plaintiff has not infringed and does not infringe any valid trademark right of Defendants, nor has Plaintiff actively induced others to infringe any valid trademark right of defendants.

31. Plaintiff has not wrongfully interfered with Free Flows business relationships or potential relationship or fraudulently misrepresented to others that Plaintiff was the owner or authorized distributor of Free Flow technology or patented products.

32. Plaintiff has not violated any other state common law or federal statutory right of Defendants as accused by Defendants in Exhibit B hereto.

33. A declaration by this Court establishing Plaintiff's non-infringement and non-violation of Defendants' asserted rights is reasonably calculated to resolve these disputes between the parties and allow Plaintiff to continue its business activities without fear of potential liability and imminent and unnecessary litigation by Defendants.

**COUNT II**  
**UNFAIR AND DECEPTIVE TRADE PRACTICES**  
**NC GEN STAT §75-1.1**

34. Plaintiff realleges paragraphs 1 through 33.

35. Defendant's aforementioned false statements and misrepresentations about Plaintiff and Plaintiff's water collection system constitute unfair, false, misleading and deceptive acts and practices within the state of North Carolina.

36. Defendant's unfair, false, misleading and deceptive acts and practices affected commerce and the consuming public in the state of North Carolina by giving consumers false and unfair impressions of Plaintiff and its goods and services and diverting such customers away from Plaintiff and to Defendants for Defendants' financial advantage.

**PRAYER FOR RELIEF**

Plaintiff respectfully prays that:

A. The Court enter a declaratory judgment that Plaintiff does not infringe and has not infringed the '748 patent, any legitimate trademark rights of Defendants, or committed any other

legal violations as accused by Defendants in Exhibit B hereto;

B. The Court permanently enjoin Defendants from engaging in further unfair and deceptive trade practices;

C. The Court order Defendants to run corrective advertising and publications, to include at regional trade shows, informing the consuming public that Defendants' statements regarding Plaintiff were false and that Plaintiff had not and does not violate any rights of Defendants;

D. That an accounting be had of Defendant's profits derived from their unfair and deceptive trade practices and that Plaintiff be awarded those profits and its damages associated with Defendant's unfair and deceptive trade practices;

E. The Court grant treble damages to Plaintiff and award Plaintiff's attorney fees pursuant to NC Gen Stat §75-16.1;

F. The costs of this action and prejudgment interests be taxed against Defendant;

G. The Court grant Plaintiff such other and further relief as the Court may deem just and proper.

Plaintiff demands trial by jury on all issues so triable.

**Coats & Bennett, P.L.L.C.**  
**Attorneys for The ERAS Group, Inc.**

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