

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION NO.:

16-3838 B

COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

MOSQUITO SHIELD LLC  
500 E. Washington Street, Ste. 24  
North Attleboro, Massachusetts,

ROWECOR, INC. a/k/a  
MOSQUITO SHIELD OF THE SOUTH SHORE  
1102 Hanover Street, Unit J  
Hanover, Massachusetts,

LESTER OAKLEY, LLC a/k/a MOSQUITO  
SHIELD OF WESTERN MASSACHUSETTS  
181 Notre Dame Street  
Westfield, Massachusetts,

- and -

BARRIER CORP. a/k/a  
MOSQUITO SHIELD OF THE NORTH SHORE  
190 R. Main Street, Unit 9  
Wilmington, Massachusetts,

Defendants.

ASSURANCE OF  
DISCONTINUANCE  
Pursuant to G.L. c. 93A, § 5

SUFFOLK SUPERIOR COURT  
CIVIL CLERK'S OFFICE  
2016 DEC 15 A 9:58  
MICHAEL JOSEPH DONOVAN  
CLERK / MAGISTRATE

I. INTRODUCTION

The Massachusetts Attorney General's Office has investigated, pursuant to the Massachusetts Consumer Protection Act, G.L. c. 93A, certain methods, acts, and practices of Mosquito Shield LLC ("Mosquito Shield"), and its Massachusetts franchisees Rowecor, Inc. a/k/a Mosquito Shield of the South Shore ("Mosquito Shield-South Shore"), Lester Oakley, LLC a/k/a Mosquito Shield of Western

Massachusetts (“Mosquito Shield of Western Massachusetts”), and Barrier Corp. a/k/a Mosquito Shield of the North Shore (“Mosquito Shield of the North Shore;” collectively, the “Mosquito Shield Franchisees”), in promoting and providing pest control services using the equipment, chemical solutions, and methods known as the “Mosquito Shield Control System” to broadcast insecticidal chemicals at Massachusetts residential properties. The subject potentially unfair or deceptive practices include, without limitation, making misleading environmental and health and safety claims in connection with the Mosquito Shield Control System.

Based on its investigation, the Massachusetts Attorney General’s Office alleges that Mosquito Shield and the Mosquito Shield Franchisees violated the Massachusetts Consumer Protection Act, G.L. c. 93A, § 2(a), and the Massachusetts Attorney General’s regulations, 940 C.M.R. 3.16 and 940 C.M.R. 6.00, among other laws and regulations, regarding the marketing of the Mosquito Shield Control System in Massachusetts, allegations that Mosquito Shield and the Mosquito Shield Franchisees challenge.

In lieu of further litigation and in recognition of Mosquito Shield’s and the Mosquito Shield Franchisees’ cooperation with the Commonwealth’s investigation, the Massachusetts Attorney General’s Office agrees to accept this Assurance of Discontinuance on the terms and conditions contained herein. The Massachusetts Attorney General’s Office, Mosquito Shield, and the Mosquito Shield Franchisees each voluntarily enter into this Assurance of Discontinuance.

This Assurance of Discontinuance does not constitute an admission by Mosquito Shield or any of the Mosquito Shield Franchisees of any fact or noncompliance with any state or federal law, rule or regulation. Mosquito Shield and the Mosquito Shield Franchisees neither admit nor deny the Massachusetts Attorney General’s allegations. Mosquito Shield and the Mosquito Shield Franchisees

enter into this Assurance of Discontinuance for settlement purposes only. This Assurance of Discontinuance is made without trial or adjudication of any issue of fact or law.

## II. ALLEGED VIOLATIONS BY MOSQUITO SHIELD

The Massachusetts Attorney General's Office alleges that:

1. Mosquito Shield is a limited liability company, maintaining its principal place of business at 500 E. Washington Street, Ste. 24, North Attleboro, Massachusetts. Mosquito Shield is in the business of, among other things, promoting and providing pest control services using the "Mosquito Shield Control System" to broadcast insecticidal chemicals at Massachusetts residential properties, and entering into franchise agreements with others to promote and provide such services in Massachusetts, including entering into such franchise agreements with the Mosquito Shield Franchisees. Mosquito Shield-South Shore is a Massachusetts corporation, maintaining its principal place of business at 1102 Hanover Street, Unit J, Hanover, Massachusetts; Mosquito Shield of Western Massachusetts is a limited liability company, maintaining its principal place of business at 181 Notre Dame Street, Westfield, Massachusetts; and Mosquito Shield of the North Shore is a Massachusetts corporation, maintaining its principal place of business at 190 R. Main Street, Unit 9, Wilmington, Massachusetts; each of which promotes and provides pest control services using the Mosquito Shield Control System to broadcast insecticidal chemicals at Massachusetts residential properties.

2. The Mosquito Shield Franchisees operate under a contract (the "Franchise Agreement") with Mosquito Shield. The Franchise Agreement provides, among other things, that Mosquito Shield reserves the right to terminate the agreement with a Mosquito Shield Franchisee if the Mosquito Shield Franchisee, or any of their principals, officers, or directors, commit any acts or reengage in any behavior that Mosquito Shield believes is reasonably likely to have an adverse effect on the Mosquito



Shield Control System, including but not limited to conduct that is fraudulent, unfair, unethical, or deceptive.

3. The Mosquito Shield Control System is a pest control method developed by Mosquito Shield to attempt to limit backyard mosquitos and other unwanted insects. The Mosquito Shield Control System involves the application of a solution, which may include pesticidal chemicals registered with the United States Environmental Protection Agency ("USEPA"), applied using a delivery system consisting of a backpack sprayer with an attached tank that serves as a reservoir for the solution to be applied. The pesticidal chemicals, synergists, and adjuvants that may be used in the Mosquito Shield Control System include: esfenvalerate (a synthetic pyrethroid insecticide); alkylphenol ethoxylate and alcohol ethoxylate (pesticide spray adjuvants); piperonyl butoxide (a pesticide synergist); deltamethrin (a pyrethroid insecticide); and bifenthrin (also a pyrethroid insecticide) (collectively, the "Pest Control Solution Chemicals").

4. The Commonwealth alleges that in marketing the Mosquito Shield Control System in Massachusetts, Mosquito Shield and the Mosquito Shield Franchisees have engaged in unfair and deceptive acts or practices by making misleading environmental and health and safety claims in connection with the Mosquito Shield Control System.

5. Consumer awareness plays a significant role in ensuring that pesticides are used safely.

6. No pesticide product, or pesticide service or method that uses pesticides, is risk free or environmentally benign. Moreover, registration of a pesticide chemical by USEPA, or another federal, state or local government agency, does not mean that the pesticide has been "approved" nor that it has been fully tested for its health and environmental effects, and does not mean that such pesticide is safe.

### III. ASSURANCES, ACCEPTANCE AND ADDITIONAL TERMS

1. Mosquito Shield, Mosquito Shield-South Shore, Mosquito Shield of Western Massachusetts, and Mosquito Shield of the North Shore, each voluntarily and knowingly is entering into this Assurance of Discontinuance by signing this document where indicated below. Without admitting the above alleged violations or the violation of any law, Mosquito Shield, Mosquito Shield-South Shore, Mosquito Shield of Western Massachusetts, and Mosquito Shield of the North Shore, each agrees to the provisions below. The Massachusetts Attorney General's Office therefore accepts this Assurance of Discontinuance pursuant to G.L. c. 93A, § 5, in lieu of further proceedings.

2. Mosquito Shield and each of the Mosquito Shield Franchisees each hereby makes the following assurances:

A. Mosquito Shield and each of the Mosquito Shield Franchisees shall refrain from publishing or broadcasting any advertisements in Massachusetts that represent, and shall refrain from otherwise representing in any way, including without limitation by using pictures or other non-verbal communication devices, directly or by implication:

(1) that the Mosquito Shield Control System when using Pest Control Solution Chemicals and/or the Pest Control Solution Chemicals themselves are "all-natural," a "safer alternative," an "EPA-approved control product," and/or "petfriendly, kid friendly, and certainly environmentally friendly." Nothing in this paragraph shall preclude Mosquito Shield or the Mosquito Shield Franchisees from making representations regarding the degree and type of risk associated with the Mosquito Shield Mosquito Control System and the pesticide chemicals, synergists, and/or adjuvants used in the Mosquito Shield Control System, if such products are used in accordance with all label precautionary statements and directions, so long as such representations are factually accurate, clearly defined as to the risk considered, and substantiated upon request under ¶ III(2)(C), below. Substantiation shall include the identification of the sorts of hazards (*e.g.*, acute and/or chronic toxicity) and exposure (*e.g.*, route, duration and magnitude) considered. Mosquito Shield shall not make any such representation if it is inconsistent with any portion of the statement required as part of the USEPA registration process for that pesticide and as such statement may be subsequently amended; or

(2) that registration of pesticides by the USEPA or other regulatory body means that they (a) are safe, non-toxic or harmless; (b) have been approved, recommended or endorsed by the USEPA, or other regulatory body; or (c) have been fully tested for all potential adverse effects.

B. If notified by the Massachusetts Department of Agricultural Resources (“MDAR”) or the Massachusetts Attorney General’s Office that a Mosquito Shield Franchisee is publishing or distributing advertisements in Massachusetts containing any such representation addressed in ¶ III(2)(A), above, Mosquito Shield shall within 7 days of receipt of such notice send a letter to the subject Mosquito Shield Franchisee by Certified Mail/Return Receipt Requested, with a copy by first class mail, notifying the Mosquito Shield Franchisee of the alleged violation. The notice shall advise the Mosquito Shield Franchisee that its Franchise Agreement may be terminated under its terms unless within 30 days of the date of the notice the Mosquito Shield Franchisee refrains from further publishing and distributing in Massachusetts advertisements containing such representations, and removes such statements or representations from physical objects owned or controlled by the Mosquito Shield Franchisee which are displayed to the public in Massachusetts, such as business signs, billboards, vehicles, and equipment, and business cards, letterhead, envelopes, notepaper, and other stationery. If the Mosquito Shield Franchisee does not come into substantial compliance within 30 days of receiving the notice from Mosquito Shield, Mosquito Shield shall take appropriate further action to compel compliance, and if the Mosquito Shield Franchisee does not come into substantial compliance within 60 days of receiving the original notice from Mosquito Shield, Mosquito Shield shall promptly terminate the Franchise Agreement with the Mosquito Shield Franchisee, and compel the Mosquito Shield Franchisee forthwith to return to Mosquito Shield any Mosquito Shield Mosquito Control System equipment it possesses.



C. Mosquito Shield and each of the Mosquito Shield Franchisees shall provide substantiation upon request from the Massachusetts Attorney General's Office for any future claims that are the subject of this Assurance of Discontinuance and are contained in any of its Massachusetts advertisements. Such substantiation shall be provided to the Massachusetts Attorney General's Office within ten days of receipt of a written request. This paragraph in no way precludes the Attorney General's Office from asserting any rights it may otherwise have under the law.

D. Mosquito Shield shall advise each of the current Mosquito Shield Franchisees in Massachusetts, and any entity with whom Mosquito Shield later contracts to perform Mosquito Shield Control System services in the Commonwealth that it must comply, and Mosquito Shield and each of the Mosquito Shield Franchisees shall comply, with the following:

(1) each person who provides pest control services to Massachusetts residents using the Mosquito Shield Control System must possess a valid Massachusetts commercial applicator's or core applicator's license;

(2) Mosquito Shield and/or the Mosquito Shield Franchisees must provide written notification to customers advising them of the pesticides used in the Mosquito Shield Control system and that people and pets should not be present when pesticides are being applied using the Mosquito Shield Control System;

(3) Mosquito Shield and/or the Mosquito Shield Franchisees must not identify the individuals associated with Mosquito Shield as "experts" in their field unless (a) the claim is substantiated upon request from the Massachusetts Attorney General's Office; and (b) Mosquito Shield and/or the Mosquito Shield Franchisee conspicuously and contemporaneously describes the specific training of such individual regarding insect behavior and effective pest elimination; and

(4) Mosquito Shield and/or the Mosquito Shield Franchisees must post conspicuous signs as required by the Massachusetts Pesticide Control Act, G.L. c. 132B, and its implementing regulations, 333 C.M.R. 2.00, *et seq.*

E. If notified by the MDAR or the Massachusetts Attorney General's Office that a

Massachusetts Mosquito Shield Franchisee is not complying with any portion of this ¶ III(2)(D)(1) through (4), Mosquito Shield shall within 7 days of receipt of such notice send a letter to the subject Mosquito Shield Franchisee by Certified Mail/Return Receipt Requested, with a copy by first class mail, notifying the Mosquito Shield Franchisee of the alleged violation. The notice shall advise the Mosquito Shield Franchisee that its Franchise Agreement may be terminated under its terms unless within 30 days of the date of the notice the Mosquito Shield Franchisee refrains from further violating the identified provision. If the Mosquito Shield Franchisee does not come into substantial compliance within 30 days of receiving the notice from Mosquito Shield, Mosquito Shield shall take appropriate further action to compel compliance, and if the Mosquito Shield Franchisee does not come into substantial compliance within 60 days of receiving the original notice from Mosquito Shield, Mosquito Shield shall promptly terminate the Franchise Agreement with the Mosquito Shield Franchisee, and compel the Mosquito Shield Franchisee forthwith to return to Mosquito Shield any Mosquito Shield Control System equipment it possesses.

3. Acceptance of this Assurance of Discontinuance by the Massachusetts Attorney General's Office shall constitute satisfaction of any claims which could have been brought against Mosquito Shield, each Mosquito Shield Franchisee, or any of their current or former principals, officers, directors, employees, agents, distributors, successor or assigns by the Massachusetts Attorney General's Office as of the date of such acceptance regarding Mosquito Shield's and the Mosquito Shield Franchisees' sale and marketing of the Mosquito Shield Control System in Massachusetts. The acceptance of this Assurance of Discontinuance by the Massachusetts Attorney General's Office shall not be deemed or construed as approval by the Massachusetts Attorney General's Office of any of Mosquito Shield's and/or of any Mosquito Shield Franchisees' activities, and Mosquito Shield and the



Mosquito Shield Franchisees, their subsidiaries, officers, employees, agents and assigns shall not make any representation to the contrary.

4. Nothing contained herein shall be construed to deprive any person of any existing private rights.

5. Promptly after the execution of this Assurance of Discontinuance, Mosquito Shield and each Mosquito Shield Franchisee shall inform in writing all employees and agents involved in any business in Massachusetts on any of its behalf, of the terms of this Assurance of Discontinuance, and shall, for a period of three years from the date of this Assurance of Discontinuance, promptly inform in writing all new employees and agents involved in any business in Massachusetts on its behalf, including, without limitation, Mosquito Shield notifying any new Mosquito Shield franchisee in Massachusetts, of the terms of this Assurance of Discontinuance. Mosquito Shield and/or a Mosquito Shield Franchisee shall within ten days of receipt of a written request by the Massachusetts Attorney General's Office provide proof to the Massachusetts Attorney General's Office that such notice of the terms of this Assurance of Discontinuance has been provided in accordance with this paragraph.

6. This Assurance of Discontinuance shall be binding on Mosquito Shield and on each Mosquito Shield Franchisee operating in Massachusetts, and each's agents, servants, employees, and successors, whether by sale of assets, merger or otherwise.

7. Pursuant to G.L. c. 93A, § 5, Mosquito Shield and the Mosquito Shield Franchisees, jointly and severally, shall pay to the Commonwealth the sum of \$10,000 (the "AOD Payment Requirement"), representing the Commonwealth's costs of investigation in this matter or appropriate civil penalties, as follows:

\$5,000 simultaneously with the signing of this Assurance of Discontinuance.  
The Commonwealth will not present this initial installment for payment unless

and until the Assurance of Discontinuance in substantially the form of this Assurance of Discontinuance has been filed with the Court; and

\$5,000 on or before March 31, 2017.

8. The AOD Payment Requirement installments due under the above paragraph 7 shall be made by bank certified or attorney's escrow check payable to the "Commonwealth of Massachusetts," and shall be delivered to the Office of the Attorney General, Environmental Protection Division, One Ashburton Place, Boston, Massachusetts 02108, Attention: I. Andrew Goldberg, Assistant Attorney General.

9. If Mosquito Shield and the Mosquito Shield Franchisees, jointly and severally, fail to pay any portion of the AOD Payment Requirements due under paragraph 7 above within five business days after the due date, all remaining unpaid payments, together with the delinquent payment, shall immediately become due and payable (the "Accelerated AOD Payment Requirement Balance"). In addition, upon such a default, interest shall immediately begin accruing on the Accelerated AOD Payment Requirement Balance at the rate of 12% per annum, and Mosquito Shield and the Mosquito Shield Franchisees, jointly and severally, shall be responsible for the payment to the Commonwealth of all accrued interest for the entire period of non-payment of the Accelerated AOD Payment Requirement Balance. Mosquito Shield and the Mosquito Shield Franchisees, jointly and severally, shall also pay all expenses, including reasonable attorneys' fees and costs of collection actually incurred by the Commonwealth, associated with collection of the payment of the Accelerated AOD Payment Requirement Balance.

10. This Assurance of Discontinuance shall be filed in the Superior Court of Suffolk County, Massachusetts. Pursuant to G.L. c. 93A, § 5, any violation by Mosquito Shield and/or by any of the Mosquito Shield Franchisees of this Assurance of Discontinuance after it becomes effective,

shall constitute *prima facie* evidence of a violation of G.L. c. 93A, § 2(a) in any civil action or proceeding that hereafter may be commenced by the Massachusetts Attorney General's Office. The terms of this agreement shall take effect as of the date this Assurance of Discontinuance is filed in the Superior Court of Suffolk County, Massachusetts.

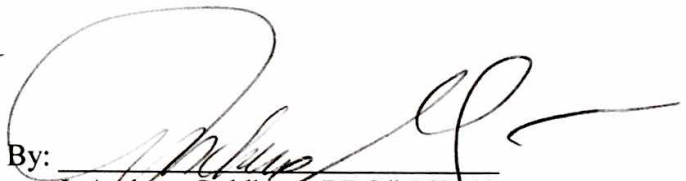
Dated: <sup>December 15</sup> ~~November 1~~, 2016

MOSQUITO SHIELD LLC,  
ROWECOR, INC. a/k/a  
MOSQUITO SHIELD OF THE SOUTH SHORE,  
LESTER OAKLEY, LLC, a/k/a MOSQUITO  
SHIELD OF WESTERN MASSACHUSETTS,  
and BARRIER CORP. a/k/a MOSQUITO  
SHIELD OF THE NORTH SHORE

COMMONWEALTH OF MASSACHUSETTS

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