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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

State of West Virginia ex rel.
Patrick Morrissey, Attorney General,

Plaintiff,

v.

Civil Action No. 23 C 236
Judge Boiley

Larry Morehead,
d/b/a L & M Construction,

Defendant.

**COMPLAINT FOR TEMPORARY AND PERMANENT INJUNCTION,
CONSUMER RESTITUTION, DISGORGEMENT, CIVIL PENALTIES,
AND OTHER APPROPRIATE EQUITABLE RELIEF**

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General (“the State”) files this Complaint asking the court to temporarily and permanently enjoin the above-named Larry Morehead, d/b/a L & M Construction, from violating the West Virginia Consumer Credit and Protection Act (“WVCCPA”), W. Va. Code §§ 46A-1-101, *et seq.*, and other applicable consumer protection laws and regulations, and to enter a final order awarding the State all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

I. PARTIES

1. Plaintiff Patrick Morrissey is the Attorney General of the State of West Virginia and is empowered to enforce the provisions of the WVCCPA, W. Va. Code §§ 46A-1-101, *et seq.*, including the provisions that govern home improvement contracting services.

2. Defendant Larry Morehead (hereafter “Morehead”) is and was engaged in the sale and provision of home improvement or contracting services in Kanawha County West Virginia at all times pertinent hereto.

3. From at least December, 2020 through the present, Morehead engaged in business under the name L & M Construction.

4. Upon information and belief, Morehead resides at 503 Bream Street, Charleston, West Virginia.

II. JURISDICTION AND VENUE

5. This court has jurisdiction to hear this matter pursuant to Article VIII, Section 6 of the West Virginia Constitution, W. Va. Code § 51-2-2(d), and W. Va. Code § 53-5-3.

6. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114.

III. BACKGROUND

7. Since at least December 2020, the Defendant has engaged in the provision of residential home improvement and contracting services in Kanawha County, West Virginia.

8. The Defendant has never held a contractor license from the West Virginia Contractor Licensing Board (“Licensing Board”) at any time pertinent hereto.

9. Notwithstanding his lack of a contractor license, the Defendant solicited and received payments from consumers to provide home improvement or contracting services, such as roof replacement.

10. Upon information and belief, the Defendant accepted payments from consumers and provided services that were substandard or incomplete.

11. To date, one formal complaint has been filed against the Defendant based upon his unlawful provision of unlicensed, incomplete, and substandard services. The Defendant never responded to the complaint.

12. The Attorney General has reason to believe many more consumers fell victim to the Defendant’s unlawful conduct.

13. The Attorney General now finds it necessary to file this enforcement action for a permanent injunction prohibiting the Defendant from engaging in home improvement or contracting services and for an order of restitution to consumers, disgorgement, civil penalties, and other equitable relief.

IV. APPLICABLE LAW

14. In 1974, the Legislature enacted the West Virginia Consumer Protection Act (“WVCCPA”), W. Va. Code §§ 46A-1-101, *et seq.*, which “is a remedial statute intended to protect consumers from unfair, illegal and deceptive business practices and must be liberally construed to accomplish that purpose.” *Fleet v. Webber Springs Owner’s Association*, 772 S.E. 2d 369, 377 (W. Va. 2015). In addition to establishing a private right of action for consumers, the Legislature authorized the Attorney General to enforce the WVCCPA, W. Va. Code § 46A-7-102.

15. The WVCCPA contains an all-encompassing, blanket prohibition against “[u]nfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce . . . ,” W. Va. Code § 46A-6-104. The WVCCPA delineates at least 15 types of conduct that constitute *per se* violations, W. Va. Code § 46A-6-102(7). The statutory list is not intended to be all inclusive. *Id.*

16. The WVCCPA defines the term “sale” as including “any sale, offer for sale, or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit,” W. Va. Code §46A-6-102(d) (emphasis added).

17. The WVCCPA defines the terms “trade” or “commerce” as meaning “the advertising, offering for sale, **sale or distribution of any goods or services** and shall include

any trade or commerce, directly or indirectly, affecting the people of the State,” W. Va. Code §46A-6-102(e) (emphasis added).

18. The business of contracting is generally governed by the West Virginia Contractor Licensing Act (“WVCLA”), W. Va. Code §§ 30-42-1, *et seq.*, and the West Virginia Contractor Licensing Board’s Legislative Rule, 28 C.S.R. § 2.¹

19. The WVCLA defines “contractor” as any person who undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid to construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, structure, or excavation associated with a project, development, or improvement, or to do any part thereof, including the erection of scaffolding or other structures or works in connection therewith, where the cost of the undertaking is \$5,000 or more for residential work, W. Va. Code § 30-42-3(d).² As such, the Defendant is a “contractor” as defined by applicable state law and regulations.

20. Violations of statutes or regulations enacted to protect the consuming public or to promote a public interest are unfair or deceptive acts or practices. *See Final Order, State of West Virginia ex rel. Darrel V. McGraw, Jr., Attorney General vs. David McCuskey, et al.*, Kanawha County Circuit Court, Civil Action No. 01-C-3041, Mar. 13, 2003.

21. In order to protect the health, safety and welfare of the public as well as public and private property and to ensure competency in provision of such services, the Legislature declared that no person may engage in this State in any act as a “contractor” as defined by W.Va. Code § 30-42-3(d) unless such person holds a contractor license from the Licensing Board to engage in such activities.

¹ Prior to June 15, 2021, the WVCLA was found at W. Va. Code § 21-11-3.

² Prior to June 15, 2021, the amount of the undertaking for residential contracting which necessitated a contractor’s license was \$2,500.00.

22. The provision of home improvement or contracting services to a natural person for a personal, family, household or agricultural purpose constitutes a “consumer transaction” as defined by W.Va. Code § 46A-6-102(b). As such, the Defendant is subject to the regulatory authority of the Attorney General under the WVCCPA as set forth in W.Va. Code §§ 46A-7-102(1).

23. Individuals and businesses who provide home improvement or contracting services to consumers must also comply with the Attorney General’s Legislative Rule Governing Prevention of Unfair or Deceptive Acts or Practices in Home Improvement and Home Construction Transactions (“Home Improvement Rule”), 142 C.S.R. § 5.

24. The Home Improvement Rule defines “home improvement” as meaning:

installing roofing, siding, paving, replacement windows, doors, awnings, heating and air-conditioning equipment, water softeners and purifiers, swimming pools, fire protection devices, or fixtures of any kind, performing substantial landscaping work involving earth-moving, large scale replanting or reseeding or engaging in the substantial remodeling or repair of any portion of an existing home or noncommercial structure or building.

142 C.S.R. § 5-2.6

25. The Defendant engages in the provision of “home improvement” services to consumers and, therefore, is subject to the provisions of the Home Improvement Rule.

26. A contractor or other person who enters into home improvement transactions must furnish consumers with a written contract that describes in a meaningful way and in plain language the goods or services purchased; the contract price together with all required financing information or credit terms and any other material terms; the approximate completion date; the service provider’s name, address and telephone number; the contractor license number, if applicable; and notice of the buyer’s right to cancel within three business days when required by applicable law.

See Home Improvement Rule, 142 C.S.R. § 5-3.1.

27. The transactions entered into by the Defendant also constitute “door-to-door” sales as defined by the FTC Rule Concerning Cooling-Off Period for Door-to-Door Sales Made at Homes or at Certain Other Locations (“FTC Rule”), 16 C.F.R. § 429, which requires that consumers be afforded notice of the unconditional right to cancel the transaction within three business days after signing the written contract in the precise manner and form required by the FTC Rule.

28. Compliance with the FTC Rule consists of three essential components:

(a) Buyers must be informed **orally** of the buyer’s right to cancel at the time that the contract for goods or services is signed, 16 C.F.R. § 429.1(e).

(b) Buyers must be furnished with a fully completed receipt or copy of the contract for goods or services that contains the date of the transaction, the name and address of the seller, and the following statement in bold face type of a minimum size of 10 points in immediate proximity to the space reserved in the contract for the consumer’s signature:

You, the buyer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. **See the attached notice of cancellation form for an explanation of this right.**

See FTC Rule, 16 C.F.R. § 429.1(a) (emphasis added).

(c) The “notice of cancellation form” must explain the right to cancel in the precise manner required by the FTC Rule, 16 C.F.R. § 429.1(b), and must be provided in duplicate along with the sales contract so the buyers may sign and return the form if they elect to cancel and retain a copy for their records.

29. The consumer may waive the three-day right to cancel under the FTC Rule only if the consumer initiated the contact and the goods or services are needed to meet a “bona fide

immediate personal emergency,” 16 C.F.R. § 429.0(a)(3). In order for the waiver to be valid, the buyer must provide the seller “with a separate signed and dated personal statement in the buyer’s handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within 3 business days.” *Id.*

30. Violation of the FTC Rule, the WVCLA, and any other state or federal law or regulation intended to protect the public and foster fair and honest competition is deemed to be an unfair or deceptive act or practice as defined by the WVCCPA, W.Va. Code § 46A-6-104.

31. Repeated and willful violations of the WVCCPA may subject the violator to a civil penalty of up to \$5,000.00 **for each violation** as authorized by W.Va. Code § 46A-7-111(2).

V. STATEMENT OF FACTS

32. During the period beginning as early as December 2020 and continuing through the present, the Defendant violated the WVCCPA by engaging in the sale and provision of home improvement contracting services without a license from the Licensing Board, and by providing work that was substandard or incomplete.

33. At all times pertinent hereto, the Defendant failed to furnish consumers with proper contracts containing the terms and conditions of the goods and services purchased, including an approximate completion date and his contractor license number (he did not have one), as required by the Home Improvement Rule.

34. The Defendant also failed to furnish consumers with notice of the three-day right to cancel in the manner and form required by the FTC Rule.

35. As of this date, the unlawful actions as described above resulted in the filing of one formal complaint against the Defendant with the Attorney General.

36. There is good reason to believe that the Defendant has entered into many other home improvement transactions in which the WVCCPA was violated, as shall be shown through discovery. The following consumer complaint serves to illustrate Defendants' unlawful practices.

Summary of Illustrative Consumer Complaint

Complaint of Shirley Goad

37. Shirley Goad of Charleston, West Virginia, contracted with the Defendant on December 10, 2020, to replace the roof on her home for a total cost of \$5,000.00, which Ms. Goad paid in full at the time of contracting.

38. On December 10, 2020, the Defendant provided Ms. Goad with a written agreement memorializing the work to be performed and disclosing the total cost of the work. A copy of the written agreement entered into between the Defendant and Ms. Goad is attached hereto as Exhibit 1 and is incorporated by reference herein.

39. The contract between the Defendant and Ms. Goad was negotiated and entered into at Ms. Goad's home.

40. The Defendant's contract with Ms. Goad failed to provide a completion date for any of the work.

41. The Defendant did not provide Ms. Goad with proper notice of the unconditional three-day right to cancel as required by state and federal law.

42. In his conversations with Ms. Goad, the Defendant omitted the material fact that he did not possess a contractor's license.

43. Work began on the contract on December 11, 2020. On December 11, 2020, the Defendant removed the existing shingles from the roof and installed a handful of new shingles.

The Defendant placed a tarp across most of the exposed roof. The Defendant failed to return to complete the work.

44. Ms. Goad reached out to the Defendant via phone multiple times after December 11, 2020, to ask when he would return to finish the work. On March 5, 2021, the Defendant returned Ms. Goad's many calls and informed her he would complete the work the following week. The Defendant never returned to complete the work and fulfill his agreement with Ms. Goad.

45. Ms. Goad was forced to hire other contractors to finish replacing her roof at additional cost.

46. Prompted by the Defendant's unlawful conduct, Ms. Goad filed a complaint with the Attorney General on April 14, 2021 and requested a refund of at least \$3,500.00, representing the value of the work the Defendant failed to perform on the original agreement. The Defendant never provided a written response to Ms. Goad's complaint.

VI. THE ATTORNEY GENERAL'S ENFORCEMENT POWERS

47. West Virginia Code § 46A-7-102 authorizes the Attorney General to enforce the WVCCPA. In order to meet this obligation, the Legislature authorized the Attorney General to conduct formal investigations, W. Va. Code § 46A-7-104, and to bring a civil action for an injunction and "other appropriate relief," W. Va. Code § 46A-7-108. The term "other appropriate relief" means the Legislature intended that the "full array of equitable relief" be available in suits brought by the Attorney General to enforce the WVCCPA. *State ex rel. McGraw v. Imperial Marketing*, 203 W.Va. 203, 506 S.E.2d 799 (1998). Thus, such relief may include consumer refunds, disgorgement, debt cancellation, and such other measures as may be necessary to secure complete justice. *Id.*

48. A circuit court is authorized by its power to grant equitable relief and by statute to award attorney's fees to the State for the successful prosecution of an enforcement action under the WVCCPA. *See CashCall, Inc., et al v. Morrissey*, No. 12-1274 (W.Va. Supreme Court, May 30, 2014) (memorandum decision) at 27-28 (award of \$446,180 in attorney's fees to the State unanimously affirmed).

49. In addition, W. Va. Code § 46A-7-111(2) provides that the Attorney General may recover a civil penalty of up to \$5,000.00 for each violation of the WVCCPA “if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter.” The term “willful” means “conduct that was intentionally engaged in [as opposed to involuntarily] that had as its consequences the violation of law.” *State v. Saunders*, 638 S.E.2d 173,174 (W. Va. 2006).

50. In addition to the Attorney General’s statutory powers under the WVCCPA, the U.S. Supreme Court has recognized that a state has the common law power and duty under a legal doctrine known as *parens patriae* (“parent of the country”) to protect the “health and well-being – both physical **and economic** – of its residents in general.” *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982) (emphasis added).

51. The Attorney General’s common law power to protect West Virginia citizens has been affirmed by federal courts and by the West Virginia Supreme Court. *See State ex rel. McGraw v. CVS Pharmacy, Inc.*, 646 F. 3d 169, 179 (4th Cir. 2011) and *State ex rel. Discover Financial Services, Inc. v. Nibert*, 744 S.E. 2d 625, 649 (W.Va. 2013) (the Attorney General retains “inherent common law powers, when not expressly restricted or limited by statute”).

VII. CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Engaging in Home Improvement Contracting Without a License)

52. The State adopts, realleges, and incorporates by reference paragraphs 1 through 51 above as if set forth fully herein.

53. The Defendant has repeatedly and willfully engaged in the sale and provision of home improvement and contracting services in West Virginia without a contractor license from the Licensing Board as required by W. Va. Code §§ 30-42-1 *et seq.*, beginning as early as 2020.

54. The Defendant engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** of the sale and provision of home improvement contracting services in West Virginia without a contractor license.

**SECOND CAUSE OF ACTION
(Failure to Furnish Proper Notice of the Three-Day Right to Cancel)**

55. The State adopts, realleges, and incorporates by reference paragraphs 1 through 51 above as if set forth fully herein.

56. The FTC Rule governing the three-day right to cancel contains two critical components; first, the seller must furnish the consumer with a fully completed receipt or copy of any contract pertaining to the sale at the time it is signed. The contract must contain the following statement in a minimum size of ten points in immediate proximity to the space reserved for the buyer's signature:

You, the buyer may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. **See the attached "Notice of Cancellation Form" for explanation of this right.**

See 15 C.F.R. § 429.1 (emphasis added).

57. The second critical component pertains to the "Notice of Cancellation Form" that is referenced in the statement advising the buyer of the right to cancel. The notice of cancellation must be attached in duplicate and contains a further explanation of the parties' respective rights

and obligations under the right to cancel, including the name and address of the seller and the last date by which the consumer may unconditionally cancel the sale. The notice of cancellation is designed so that the consumer who wishes to cancel need only sign and date one copy of the notice and place it in the mail to the seller at the address listed. The second copy of the notice is retained by the consumer.

58. A seller that fails to furnish consumers with notice of the three-day right to cancel in the manner and form required by the FTC Rule has engaged in an unfair or deceptive act or practice, 16 C.F.R. § 429.1. As such, any violation of the FTC rule is an unfair or deceptive act or practice in violation of the WVCCPA, W. Va. Code § 46A-6-104.

59. The Defendant engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** of entering into a contract or agreement, orally or in writing, with consumers for the sale or provision of home improvement or contracting services without providing them with notice of the three-day right to cancel in the manner and form required by the FTC Rule.

THIRD CAUSE OF ACTION
(Failure to Begin or Complete Work by Date Promised)

60. The State adopts, realleges, and incorporates by reference paragraphs 1 through 51 above as if set forth fully herein.

61. The Home Improvement Rule requires home improvement contractors to include an approximate date of completion in the contract and to complete work by the date stated in the contract unless completion is delayed by events beyond the contractors' control or the buyer has agreed in writing to a later date, 142 C.S.R. 5-3.1.12.

62. Any violation of the Home Improvement Rule is an unfair or deceptive act or practice, 142 C.S.R. 5-1-7, in violation of W. Va. Code § 46A-6-104.

63. The Defendant engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 **in each instance** where the agreement failed to include an approximate date of completion in the contract and when he failed to complete or even begin a home improvement project by the date represented to the consumer.

**FOURTH CAUSE OF ACTION
(Unfair or Deceptive Acts or Practices)**

64. The State adopts, realleges, and incorporates by reference paragraphs 1 through 51 above as if set forth fully herein.

65. Upon information and belief, and as indicated by the complaint of the consumer outlined above, the Defendant entered into contracts and accepted down payments from consumers to provide home improvement services, but the work he performed was substandard or incomplete.

66. The Defendant also failed to disclose to consumers that he lacked a contractor's license. The lack of a contractor's license is a material fact which, if disclosed, would impact a consumer's decision on whether to engage in a home improvement agreement.

67. Failure to perform work for which payment has been received, or the provision of work that is substandard or incomplete, is an unfair or deceptive act or practice in violation of W.Va. Code § 46A-6-102(7)(M) and W.Va. Code § 46A-6-104.

68. The Defendant engaged in unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-102(7)(M) and W. Va. Code § 46A-6-104 **in each instance** when he failed to perform work for which he was paid, when he performed work that was substandard or incomplete, and when he omitted a material fact that would impact a consumer's decision to agree to a home improvement contract.

PRAYER

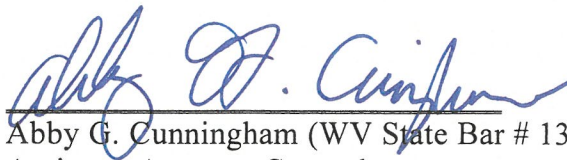
WHEREFORE, the State respectfully prays that this court enter a final order:

- (a) finding that Morehead has violated the WVCCPA as alleged herein;
- (b) permanently enjoining Morehead from violating the WVCCPA and from engaging, directly or indirectly, in the activity of providing home improvement or contracting services, as the owner of a business, or as an employee, agent, subcontractor, or in any capacity whatsoever;
- (c) awarding the State a judgment against Morehead in the amount representing all payments collected by Morehead, or indirectly from any other third party, from consumers arising from Morehead's unlawful home improvement contracts and additional amounts consumers have paid or will pay to others to complete the work or repair damages to property caused by Morehead;
- (d) finding that Morehead has engaged in a course of repeated and willful violations of the WVCCPA as alleged in the causes of action set forth herein above that renders them subject to a civil penalty of up to \$5,000.00 to the State for each and every such violation as authorized by W. Va. Code § 46A-7-111(2);
- (e) requiring that Morehead reimburse the State for all its costs, including reasonable attorney's fees, expended in connection with the investigation and litigation of this matter as authorized by W. Va. Code § 46A-7-108; and
- (f) awarding the State such other and further equitable relief as may be necessary to secure complete justice in this matter.

Respectfully submitted,

STATE OF WEST VIRGINIA ex rel.
PATRICK MORRISEY,
ATTORNEY GENERAL, Plaintiff

By Counsel

A handwritten signature in blue ink, appearing to read "Abby G. Cunningham", is written over a horizontal line.

Abby G. Cunningham (WV State Bar # 13388)

Assistant Attorney General

F. Scott Caudill (WV State Bar # 8961)

Assistant Attorney General

Consumer Protection/Antitrust Division

Post Office Box 1789

Charleston, West Virginia 25326-1789

Phone: (304) 558-8986 Fax: (304) 558-0184

Email: Abby.G.Cunningham@wvago.gov

Email: Frederic.S.Caudill@wvago.gov

marked

I and my A will do one Root For
Shirley Goad, I will ~~not~~ Be Able
For anything that happens to me or my workers
this lady will be clear of all doing
IF I was to get hurt.

(Lang Mackel)
12-10-2020

for the sum of \$15000

one year Leak Free
IF NOT will do
for free.

Shirley Goad

R & M Construction

Witness 1439 Clay Ave
Chas. WV.

Eric Rogers

Witness work for Mullen Plumbing

(1st job) - Walkway - started 12-4-20
Cost \$750.00

EXHIBIT

1