

IN THE CIRCUIT COURT OF PUTNAM COUNTY, WEST VIRGINIA

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

Plaintiff,

v.

**Civil Action No. _____
Judge _____**

**GARY MAY, VERONICA MAY,
TYLER MAY and JOSHUA MAY,
all individually and dba May Brothers
Mobile Home Movers and
other fictional names,**

Defendants.

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

Plaintiff, the State of West Virginia ex rel. Patrick Morrissey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the court to temporarily and permanently enjoin the above-named Defendants, Gary May, Veronica May, Tyler May, and Joshua May (collectively "the Mays" or "Defendants") 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 such other equitable relief as may be necessary to secure complete justice in this matter.

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 the sale, installation, repair and remodeling of used mobile homes and related home improvement services.

2. Defendants Gary May and Veronica May, husband and wife, reside at 36 May Lane, Spencer, West Virginia 25276 or 93 Daniels Run Road, Spencer, West Virginia 25276.

3. Defendant Tyler May is the grandson of Gary May and is believed to reside at 2282 Lick Fork Road, Spencer, West Virginia 25276 or at 4073 Ripley Road, Ripley, West Virginia 25271.

4. Defendant Joshua May is the son of Gary May and resides at 3353 Lick Fork Road, Spencer, West Virginia 25276.

5. Complaints filed with the Attorney General disclose that the above-named Defendants have been and currently are engaged in a joint venture for the unlawful sale, installation, repair and remodeling of used mobile homes, including related home improvement services in Roane, Kanawha, Putnam, and surrounding counties in West Virginia.

II. JURISDICTION AND VENUE

6. 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, and W. Va. Code § 53-5-3.

7. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114 and W. Va. Code § 56-1-1(a) (6).

III. INTRODUCTION

8. Records on file with the Attorney General and the Commissioner of the West Virginia Division of Labor indicate that at least 15 consumer complaints have been filed against the Defendants from 2009 through the present. All of the complaints arise from the sale, delivery, installation, remodeling and repair of used mobile homes.

9. The sale, delivery, installation, repair and remodeling of used mobile homes are regulated activities that require licenses from the Manufactured Housing Board and the Contractor Licensing Board. However, none of the Defendants currently have or have ever had the required licenses. The Manufactured Housing Board has issued at least seven Cease and Desist Orders against the Defendants for operating without the required licenses from 2011 through 2021. *See* Affidavit of Brian L. White, West Virginia Division of Labor, Labor Program Manager (“White Affidavit”), attached hereto as Exhibit 1. As indicated by the complaints described below and the continued sale and solicitation of their services through Facebook posts, it is evident that Defendants have continued to engage in these activities through the present despite issuance of the Cease and Desist Orders. *See, i.e.*, Facebook post by Defendant Tyler May dated October 27, 2022 advertising a “3 bed 1 bath all electric delivered” mobile home for \$12,500, attached hereto as Exhibit 2.

10. In addition to engaging in regulated activities without the required licenses, the complaints allege and disclose that the Defendants, individually, collectively, and in concert with each other, have engaged in conduct that violates the WVCCPA in numerous respects, including the following: deceptive sales practices; sales of homes that are not fit for occupancy; faulty and unsafe installation of used mobile homes, failure to make promised repairs and renovations, failure to install utilities, HVAC systems and other promised systems and appliances; failure to

provide titles, and failure to return deposits when consumers exercise their right to refuse delivery of homes that are not fit for occupancy.

11. The West Virginia Division of Labor and the Attorney General have tried without success to resolve the consumer complaints and to secure the Defendants' voluntary compliance with applicable laws and regulations, which necessitated the filing of this civil enforcement action.

IV. APPLICABLE LAW

General Consumer Protection

12. 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.

13. In order to meet its obligation to enforce the WVCCPA, the Legislature authorized the Attorney General's office to conduct formal investigations, W. Va. Code § 46A-7-104, and to bring civil actions for an injunction and "other appropriate relief," W. Va. Code § 46A-7-108. Such relief may include consumer refunds, disgorgement of ill-gotten gains, debt cancellation, and other measures necessary to secure complete justice, including an award of costs and attorney's fees. 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.”

14. 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(5) (emphasis added).

15. 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(6) (emphasis added).

16. No person may engage in or prosecute any business activity in the State of West Virginia without first obtaining a business registration certificate from the Tax Commissioner of the State of West Virginia, W. Va. Code § 11-12-3(a).

Unfair or Deceptive Acts or Practices

17. 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), but the list is not intended to be all inclusive. *Id.* Among other things, the WVCCPA prohibits:

The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived, or damaged thereby;

See W. Va. Code §46A-6-102(7) (M) (emphasis added).

The Implied Warranty of Merchantability

18. The foremost protection for consumers in the purchase of goods is that the goods must be merchantable, a protection known as the implied warranty of merchantability. The term “merchantable” means in pertinent part:

[T]he goods [must] conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

See W. Va. Code § 46A-6-102(c). This special protection afforded by the implied warranty of merchantability cannot be waived, W. Va. Code § 46A-6-107.

19. In the context of used mobile homes, the implied warranty of merchantability requires that a used mobile home must be in in a fit and habitable condition at the time of delivery and that all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances must be in good and safe working order and condition.

20. The merchantability of mobile homes is also measured by federal construction and safety standards which have been adopted by the State of West Virginia, W. Va. C.S.R § 42-19-7.2. The sale of any mobile home that violates any state or federal standard is unlawful, W. Va. C.S.R. § 42-19-7.1, and constitutes an unfair or deceptive act of practice, W. Va. Code § 46A-6-104.

The Sale, Installation, Remodeling and Repair of Used Mobile Homes

21. The sale, installation, remodeling and repair of manufactured homes are governed in part by the West Virginia Manufactured Housing and Construction and Safety Standards Act (“Manufactured Housing Act”), W. Va. Code §§ 21-9-1 et seq. and its implementing Legislative

Rule, W. Va. C.S.R. §§ 42-19-1 et seq. The provisions of the Manufactured Housing Act and Legislative Rule are administered and enforced by the West Virginia Manufactured Housing Construction and Safety Board (“Manufactured Housing Board”), W. Va. Code § 21-9-3 and 4.

22. The Manufactured Housing Act defines several terms that are pertinent to any person who engages in the sale, installation, remodeling and repair of manufactured homes, including the following:

(a) The term “contractor” means “any person who performs *operations* in this state at the occupancy site which render a manufactured home fit for habitation,” W. Va. Code § 21-9-2(c).

(b) The term “operations” includes, without limitation, “installation or construction of the foundation, positioning, blocking, leveling, supporting, tying down, connecting utility systems, making minor adjustments or assembling multiple or expandable units” and also includes “transporting the unit to the occupancy site . . . ,” W. Va. Code § 21-9-2(c).

(c) The term “dealer” means “any person engaged in this state in the sale, leasing or distributing of new **or used** mobile homes, primarily to persons who in good faith purchase or lease a manufactured home for purposes other than resale” (emphasis added). The Manufactured Housing Act provides that no person shall engage in the sale, installation, transportation, or repair of a new or used mobile home without a license from the Manufactured Housing Board, W. Va. Code § 21-9-9.

23. It is unlawful for a licensee to engage in “any deception or false or fraudulent representations or deceitful practices’ in the sale or financing of new or used mobile homes, W. Va. C.S.R. § 142-19-14.1(p). As such, any person who violates any provision of the Manufactured Housing Act, including the sale, installation, remodeling or repair of a new or

used mobile home without a license, has engaged in an unfair or deceptive act or practice in violation of the WVCCPA, W. Va. Code § 46A-6-104.

Licensing Requirements for the Provision of Contracting Services

24. The business of contracting is generally governed by the West Virginia Contractor Licensing Act (“WVCLA”), W. Va. Code §§ 21-11-1 *et seq.*, and the West Virginia Contractor Licensing Board’s (“Board”) Legislative Rule, W. Va. C.S.R. §§ 28-2-1 *et seq.* The WVCLA currently defines “contractor” as any person who undertakes to construct, alter, repair, or improve a building or structure where the cost of the undertaking is \$5,000.00 or more, W. Va. Code § 21-11-3(c).¹

25. The WVCLA further provides that no person may engage in this state in any act as a “contractor” without a license from the West Virginia Contractor License Board (“Contractor Licensing Board”) or aid or abet any other person to do so, W. Va. Code § 21-11-6(a) and W. Va. Code § 21-11-14(g)(9)(i), respectively. A person who engages in contracting without a license or who aids another to do so has committed an unfair or deceptive act or practice, W. Va. Code § 46A-6-104.

26. In order to engage in the installation of mobile homes, a person or entity must obtain a license from the Contractor Licensing Board with a classification of 013, which qualifies the contractor for “Manufactured Home Installation.” Once this classification is obtained, the contractor automatically qualifies for a license from the Manufactured Housing Board to perform such tasks as may be necessary to properly install a HUD-certified mobile home.

¹ The threshold for the requirement of a contractor license was raised from \$2,500.00 to \$5,000.00 effective June 25, 2021. *See* W. Va. Code § 30-42-3(d) and § 30-42-6.

27. In order to protect the health, safety and welfare of the public as well as public and private property and to ensure competency in the provision of such services, the Legislature declared that no person may engage in “plumbing” as defined by W. Va. Code § 21-14-2(e) without a specialty license from the Commissioner of Labor on or after January 1, 2009, W. Va. Code § 21-14-3(a).

28. In order to protect the health, safety and welfare of the public as well as public and private property and to ensure competency in the provision of such services, the Legislature declared that no person may engage in “HVAC” services as defined by W. Va. Code § 21-16-2(b) without a specialty license from the Commissioner of Labor on or after January 1, 2016, W. Va. Code § 21-16-3(a).

29. In order to protect the health, safety, and welfare of the public as well as public and private property and to ensure the competency of those who perform electrical work, no person, firm, or corporation may perform electrical work after 1989 without a license and certificate issued by the State Fire Marshall, W. Va. Code § 29-3B-1 and § 29-3B-2.

The Provision of Home Improvement Services

30. A person or entity who engages in the provision of “home improvement” services as defined below 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”), W. Va. C.S.R. §§ 142-5-1 et seq. even when the job in question does not require a contractor license. 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.

W. Va. C.S.R. § 142-5-2.6.

31. Among other things, the Home Improvement Rule requires that consumers be provided 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” (if applicable), and any other material terms agreed to by the parties, W. Va. C.S.R. § 142-5-3.1.1. The Home Improvement Rule also requires that the written contract include an approximate completion date, that the service provider substantially perform the contract in accordance with its terms, and that the work be completed by the specified date unless delayed by events beyond the service provider’s control. *See* W. Va. C.S.R. § 142-5-3.1.2, § 142-5-3.1.8, § 142-5-3.1.12, W. Va. C.S.R. § 142-5-1.7, respectively.

32. The Home Improvement Rule also prohibits liquidated damages clauses or forfeitures of deposit if consumers opt to cancel, W. Va. § 142-5-3.1.28. Failure to comply with any provision of the Home Improvement Rule is an unfair or deceptive act or practice as defined by the WVCCPA, W. Va. C.S.R. § 142-5-1.7.

The FTC Rule

33. The Federal Trade Commission Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (“FTC Rule”), 16 C.F.R. § 429.0, affords additional, special protections to consumers in “door-to-door sales,” which the FTC deems to be inherently high-pressure. In these sales, the seller must provide consumers with an unconditional right to cancel within three business days following the transaction, 16 C.F.R. § 429.1(a).

34. The FTC Rule defines "door-to-door sale" as a sale, lease, or rental of consumer goods or services with a purchase price of \$25 or more in which the consumer's agreement or offer to purchase is consummated at the consumer's residence or at a **place other than the seller's place of business**, 16 C.F.R. § 429.0(a) (emphasis added). If the seller has no fixed place of business or is operating from a temporary or short-term location, the FTC Rule applies and the consumer must be given notice of the three-day right to cancel. *Id.*

35. Specifically, the FTC Rule requires that consumers be informed of the right to cancel orally, by inclusion of a specified statement in immediate proximity of the place for their signature on the contract, and by provision of a separate "notice of cancellation" in duplicate, 16 C.F.R. § 429.1 (a) (b) and (e).

36. The failure to comply with any provision of the FTC Rule when applicable is an unfair or deceptive act or practice, 16 C.F.R. § 429.1. Hence, failure to comply with the FTC Rule is an unfair or deceptive act or practice in violation of the WVCCPA, W. Va. Code § 46A-6-104.

Joint and Several Liability of Defendants under Principle of Joint Venture

37. A joint venture "is an association of two or more persons to carry out a single business enterprise for profit, for which purpose they combine their property, money, effects, skill, and knowledge." Syl. Pt 2, *Price v. Halstead*, 355 S.E. 2d 380, 382 (W. Va. 1987). A joint venture "arises out of a contractual relationship between the parties" in which "[t]he contract may be oral or written, express or implied." *Id.*

38. Members of a joint venture are "jointly and severally liable for all obligations pertaining to the venture, and the actions of the joint venture bind the individual co-ventures."

Dailey v. Ayers Land Development, LLC, 825 S.E. 2d 351, 358 (W. Va. 20190), citing *Armor v. Lantz*, 535 S.E. 2d 737, 742 (W. Va. 2000).

V. STATEMENT OF FACTS

Complaints against the Mays 2018 - 2023

39. The Attorney General opened an investigation of the May Brothers after identifying 12 unresolved complaints. Three additional complaint have been received since that time. The records indicate that the Attorney General has routinely forwarded past complaints against the Defendants to the Manufactured Housing Board for disciplinary action for engaging in the sale, installation, repair and remodeling of used mobile homes without a license. The Board issued appropriate Cease and Desist Orders to Defendants. Unbeknownst to the Attorney General until recently, the Defendants continued to engage in the unlawful activities in disregard of the Cease and Desist Orders, which necessitates the filing of this Complaint.

40. As indicated by the summaries of their complaints herein below, each of the complainants report that the Defendants engaged in one or more violations of the WVCCPA. Each such instance constitutes an unfair or deceptive act or practice in violation of the W. Va. Code § 46A-6-104. In most instances, the Defendants have not respond to the complaints.

*Complaint of Lydia Parker
Filed January 19, 2023*

41. On February 27, 2021, Gary May and Veronica May came to the home of Lydia Parker, then age 88, in Millersburg, Ohio, to convince her to buy a home from them because they heard she was planning to move back to West Virginia.

42. Ms. Parker, who now resides in Reedy, West Virginia, trusted Gary May because he was her nephew and trusted his wife, Veronica May, because she worked in a bank.

43. After making numerous positive representations about the condition of the home, the repairs and renovations they would make, and the timing of delivery and set-up, Ms. Parker agreed to buy the 28 x 79 doublewide home, sight unseen, for \$57,000.00. A copy of her check for \$57,000.00 payable to Gary May is attached hereto as Exhibit 3.

44. The price of the home was to include moving and delivery of the home to her site on Lick Fork Road near Spencer, West Virginia, set-up, connecting all utilities, and various repairs and renovations to the inside of the home.

45. Gary May or persons acting on his behalf moved the home to her site on Lick Fork Road near Spencer in March 2021. At that time Ms. Parker was staying with her brother, Carol Starcher, at his home in Ivydale in Clay County while waiting for the home she purchased to be ready for occupation.

46. While her home was being set up, Gary May persuaded Ms. Parker to add a fourth bedroom, bathroom, and closet to the home for an additional \$30,000.00. Gary May and Veronica May came to the home in Ivydale where Ms. Parker was staying to facilitate payment for the addition. While in the living room of the house, Gary May and Veronica May made the telephone call to Calhoun County Bank where Ms. Parker had her account and where Veronica May also worked. While in their presence and with the phone on speaker, Ms. Parker gave her consent to transfer \$30,000.00 from her account to an account designated by Gary May. *See* document confirming withdrawal of \$30,000.00 from account of Lydia Parker at Calhoun Banks on June 28, 2021 attached hereto as Exhibit 4.

47. As of this date, the mobile home delivered by Gary May has not been set up properly nor did he keep the numerous other promises made to Ms. Parker as part of the bargain.

The unkept promises and other concerns include the following:

a. Work on the home was not completed before her return to West Virginia as promised;

b. No tie-downs or anchors have been installed;

c. Gary May refused to replace the kitchen cabinets, which are filled with black mold and consist of deteriorating wood;

d. The den has substandard subflooring which is not suitable for flooring;

e. The electrical work does not conform to applicable electrical code;

f. Gary May refused to replace the gutters which were damaged in transit;

g. The sewage lines in the added fourth bedroom were not installed properly, which prevents them from draining;

h. Ms. Parker was forced to purchase numerous items that should have been provided by Gary May, including flooring, carpet and insulation, lighting, and kitchen cabinets;

i. Gary May subcontracted out the electrical work to Scott May of Spencer. Neither Gary May nor Scott May have an electrician's license from the State Fire Marshal. See email from Kaya Burns, Administrative Assistant II, West Virginia State Fire Marshal's office, attached hereto as Exhibit 5. The electrical work for the porch is substandard and unfinished; and,

j. The home is in need of a hot water tank, trim, storm doors, and steps to the laundry room.

48. As of this date Gary May has failed to provide Ms. Parker with a title to the mobile home, which has prevented her from purchasing home owner's insurance. In response to her repeated requests, Gary May texted a photo of a document to her grandson that he represented to be the title to the home. The document he texted, which is attached hereto as Exhibit 6, is not the title to the home that she purchased.

Complaint of Vickie and Ronnie Cottrill
Filed January 9, 2023

49. Vickie and Ronnie Cottrill of Sandyville, West Virginia, responded to an ad by Tyler May on Facebook for the sale of a mobile home. They contacted Tyler May and he showed them the home but it was not acceptable to them. Tyler May told them he would have another doublewide mobile home available soon and promised to contact them when it was ready for sale.

50. Tyler May later showed them a 2016 Clayton 28x60 doublewide mobile home in Spencer that had significant damage from a fire in the end where the dryer was located. Gary May, who was also present, told them he would "fix it up brand new."

51. On January 12, 2021, the Cottrills made an agreement with Gary May to purchase the home that Tyler May showed them for \$42,000.00. Gary May asked for a deposit of \$1,000.00 that day and asked for another \$10,000.00 shortly after that. Under the terms of the agreement, the Cottrills were to pay another \$10,000.00 when the home was delivered and pay the balance owed when all promised work was completed.

52. Gary May promised to make all necessary repairs and renovations so that the home would be "like new," among other things, he promised to install new wiring, redo the drywall, install a furnace, A/C unit, and hot water tank, and to "redo the entire house" with the exception of the flooring and kitchen cabinets, which the Cottrills opted to do themselves.

53. Gary May never furnished the Cottrills with a written contract memorializing the promises he made. When the Cottrills agreed to make the purchase and made their first payment, Gary May merely gave them an Invoice acknowledging the purchase and payment but the Invoice did not specify the terms that induced the Cottrills to purchase the home. A copy of the Invoice is attached hereto as Exhibit 7.

54. Gary May or persons acting on his behalf delivered the home to the Cottrills' designated site in April 2021. When the Cottrills inspected the home, it was filled with trash and they observed that hardly any of the promised repairs and renovations had been made. The unkept promises and concerns include the following:

a. The home was not set-up properly; the Cottrills had to do substantial additional work at additional expense to resolve the set-up flaws;

b. The roof and other sections of the home were damaged in transit which Gary May refused to repair; a new roof will be required at additional expense to the Cottrills;

c. The section of the home damaged by fire was not fixed and required substantial additional work by the Cottrills to repair at their additional expense;

d. The promised furnace, A/C unit, and hot water tank were not installed. Although Gary May later delivered these items, the Cottrills had to hire others at their expense to install these items;

e. The promised electrical work was not performed, which will require the Cottrills to hire others at their own expense to do the electrical work; and,

f. Since Gary May failed to do the promised work, the Cottrills essentially must redo the entire house at their own expense to make it safe for habitation.

55. The Cottrills made total payments of \$31,000.00 to Gary May for the home. Copies of their cancelled checks to Gary May, including a check to Scott May for “electric” work, are attached hereto as Exhibits 8 and 9.

56. As of this date, Gary May has not provided the Cottrills with the title to their home.

*Complaint of Tamara Barker
Filed December 19, 2022*

57. Tamara Barker of Sandyville, West Virginia, knew of Gary May and the May Brothers through past Facebook postings advertising used mobile homes for sale. On this occasion, she located Gary May through an ad in the Trader’s Guide.

58. Gary May invited her to visit his lot in Spencer where she found a mobile home that would suit her needs if repaired, renovated, and set-up properly. Gary May offered to sell her that home for \$30,000.00.

59. Gary May came to her home in Sandyville on August 16, 2022 to assess the value of her mobile home that she wished to use as a trade-in. Gary May said he would give her a trade-in value of \$10,000.00 for her home.

60. While in her home, Gary May agreed to redo the home and make all necessary repairs and renovations. Based on those representations, she agreed to purchase the home and wrote a check for \$20,000.00 payable to Gary May. A copy of the cancelled check is attached hereto as Exhibit 10.

61. Gary May did not provide her with a written contract memorializing all the terms of the agreement. He only provided her with a document called “Invoice” that she did not read closely at that time. She later noticed that Gary May only credited her trade-in for \$7,500.00

rather than the \$10,000.00 he promised when she agreed to make the purchase. The Invoice also did not contain all the promises made by Gary May.

62. Gary May and others working on his behalf came to take her home and to deliver the home she purchased on September 22, 2022, at which time she observed that Gary May did not keep the numerous promises he made that induced her to make the purchase. Gary May's unkept promises and concerns includes the following:

- a. Failed to install end of home that was damaged by a tree when delivered;
- b. Missing all shutters on home's backside and one at end of home;
- c. Failed to install flooring throughout home;
- d. Failed to install trim throughout home;
- e. Failed to install two exterior lights on outside of home and one interior light in food pantry;
- f. Four vent covers missing;
- g. Several new screens needed in windows;
- h. Exhaust fan in guest bathroom missing;
- i. Failed to finish walk-in closet;
- j. Failed to hang cabinet in laundry room;
- k. Failed to finish back door;
- l. Failed to hang three doors in master bedroom and walk-in closet;
- m. Hole in hot water tank, on outside wall;
- n. Failed to install trim throughout home;
- o. Failed to finish front porch;
- p. Failed to install sufficient vinyl at front door; and,

q. Furnace does not operate properly and is missing heat pump.

63. Perhaps the most serious concern involved the electrical wiring, which Gary May subcontracted out to Scott May of Spencer. Neither Gary May nor Scott May have an electrician's license from the State Fire Marshall. *See* email from Kayla Burns, Exhibit 5, *supra*. The wiring was substandard, incomplete and believed to be in violation of the electrical code, thereby placing Ms. Barker and her grandchild in imminent danger of injury or death from fire.

64. Specifically, the wires that connect from a breaker box beneath Ms. Barkers' home to a breaker box inside her home were too long, which allowed the wires to lay in mud and water beneath her home. Ms. Barker repeatedly asked Gary May to fix this obvious fire hazard but he has refused to send a licensed electrician to redo the wiring. Fearing that the faulty wiring would burn her home down, Ms. Barker was forced to hire a licensed contractor on February 7, 2023 to redo the wiring at an additional cost of \$1,700.00.

65. Gary May has failed to provide her with a title to the mobile home.

*Complaint of Carolyn B. Wolfe
Filed January 14, 2021*

66. Carolyn B. Wolfe of Poca, West Virginia, purchased a used mobile home from Gary May and Tyler May of May Brothers for \$12,000.00 on October 2, 2020. Delivery and installation of the home was repeatedly delayed without justification. When the home was finally delivered, the windows were broken and she had to call May Brothers repeatedly before the windows were finally replaced. She invested approximately \$30,000.00 in improvements on the trailer but May Brothers never provided her with the title, which prevented her from purchasing insurance to protect her home. After intervention by the Attorney General, the Defendants finally provided the title to her home approximately one year after the date of purchase.

Complaint of Robert and Courtney Holmes
Filed May 29, 2019

67. Robert and Courtney Holmes of Elkview, West Virginia, purchased a used mobile home from Joshua and Eugene May² of May Brothers for \$8,000.00 on May 9, 2019. The purchase agreement required May Brothers to install the home, fix the dry wall in bathroom, remodel the bathroom, and fix two holes in the floor. May Brothers repeatedly failed to deliver the home when promised. When delivery was finally attempted, the home could not be installed because May Brothers failed to bring the necessary equipment. Consequently, the home was placed temporarily on a property on Wills Creek Road in Elkview. At that point, Mr. and Mrs. Holmes got to view the home and saw that it had suffered substantial damage since the time they first agreed to purchase the home. They rescinded their purchase and demanded that their money be returned, but May Brothers refused. May Brothers did not respond to their complaint. The Holmes subsequently sued and obtained a judgement against Joshua and Eugene May in Kanawha County Magistrate Court for \$8,000.00 plus court costs and interest on December 13, 2019. Copies of their civil complaint and judgment, which has never been satisfied, are attached hereto as Exhibits 11 and 12, respectively.

Complaint of Edward Gruszowski
Filed July 18, 2018

68. Edward Gruszowski of Glenville, West Virginia, made a deposit of \$1,000.00 to Greg May of May Brothers toward the purchase of a mobile home on May 24, 2018. However, when he was finally allowed to view the home on the inside, the floors were buckled, the kitchen cabinets were deteriorated, and there was mold throughout the home. He rescinded his offer to

² Eugene May died on February 9, 2023. See <https://www.moveremission.com/obituaries/?name=orville-eugene-may>.

purchase because of the home's unfit condition and asked that his deposit be returned, but May Brothers refused. May Brothers failed to respond to his complaint.

Complaints against the Mays 2009 - 2014

69. The State then reviewed older complaints against the May Brothers, as summarized alphabetically below, which show a pattern and practice of the same and additional violations of the WVCCPA:

Complaint of Ernest and Helen Hudnall

70. Ernest and Helen Hudnall of Elkview, West Virginia, purchased a used mobile home from Greg May of May Brothers in 2009. The Hudnalls did not state the purchase price on their complaint and we were unable to reach them to verify the price. While attempting to install the home, the May Brothers bent the frame and severely damaged the home such that it could not be occupied. Mr. Hudnall asked that the home be repaired or that his money be refunded, but the May Brothers refused. Upon information and belief the May Brothers never repaired the home or refunded their money and the Hudnalls were never able to occupy the home. The May Brothers did not respond to their complaint.

Complaint of David Helmick

71. David Helmick of Copen, West Virginia, purchased a used mobile home from Eugene May of May Brothers for \$28,000.00 on February 20, 2012. May Brothers failed to keep its promise to fix all places where insulation had been torn, fix all water leaks, and install and charge an air conditioner. May Brothers also failed to make the numerous promised repairs and also failed to provide him with a title. Upon information and belief, May Brothers never made the promised repairs or provide him with a title. May Brothers did not respond to the complaint.

Complaint of Margaret Copen

72. Margaret Copen Elkview, West Virginia, purchased a used double wide mobile home from Gary and Eugene Mays of May Brothers for \$43,000.00 in February, 2013. The home was not installed properly, none of the promised repairs were made, and the air conditioner was not delivered. The May Brothers failed to respond to the complaint.

Complaint of Karen Campbell

73. Karen Campbell of Charleston, West Virginia, purchased a used mobile home from Gary May of May Brothers at its Spencer, West Virginia location for \$14,000.00 on April 2013. She said she was unable to receive a title despite numerous requests. The May Brothers did not respond to her complaint. We have been unable to reach Ms. Campbell to confirm whether she ever received her title.

Complaint of Terry Reed

74. Terry Reed of Ovapa, West Virginia, purchased a used doublewide mobile home sight unseen from Eugene May for \$25,000.00 on April 5, 2013. The price was to include delivery, setup, repairs and remodeling. Delivery was delayed without justification for several months and, when it was delivered, the required repairs and remodeling had not been completed. The home was still not fit for occupancy one year after delivery. Upon information and belief, May Brothers never completed the repairs and remodeling and did not reimburse her for the cost of hiring another party to do the work. We were not able to reach Ms. Reed to verify whether the home was ever fit for occupancy.

Complaint of Michael Cowger

75. Michael Cower of Sutton, West Virginia, purchased a used mobile home from Gary May of May Brothers for \$12,000.00 on May 1, 2013. The written contract required that the home be “delivered and blocked” and guaranteed that the water lines, electricity, and furnace

would be in good condition. The home was not installed properly, which resulted in extensive damage to the home. Mr. Cowger provided a lengthy list of problems with the home that the May Brothers failed to repair and that he was forced to pay for on his own. The May Brothers did not respond to the complaint.

Complaint of James D. Fox

76. James D. Fox of Lookout, West Virginia, hired Don May of May Brothers on July 26, 2013 for \$5,000.00 to move his mobile home a distance of 10 miles from Victor to Lookout, West Virginia and to install the home at its new location. The contract required that the home be re-leveled and anchored. May Brothers moved the home but did not install it properly. The home also suffered extensive damage from the move, which May Brothers failed to repair. May Brothers did not respond to the complaint.

Complaint of Larry Durst

77. Larry Joe Durst of Cottageville, West Virginia, purchased a mobile home from Eugene May of May Brothers for \$13,500.00 on November 21, 2013. The May Brothers promised to deliver the home and “block it up” and make other repairs. Although the home was delivered, it was just dropped on the site and not “blocked up.” The May Brothers also failed to connect the utilities or make any promised repairs. The home also did not have a furnace. As a result, the home was never fit for occupancy. Mr. Durst’s son, Ronnie Durst, advised that the home was sold for a huge loss because of the May Brothers’ failure to make promised repairs.

Complaint of Sandra Hanshaw

78. Sandra Hanshaw of Prociuous, West Virginia, bought a used mobile home for \$10,000.00 from Eugene May of May Brothers on May 5, 2014. After she paid him, he said he could not deliver the home because it was in a flood zone. She then requested that he refund the

money. He told her he had already spent some of the money but promised to refund her money when he resold the home. Upon information and belief, he never refunded her money. May Brothers did not respond to the complaint.

Summary of Complaints

79. All told, the Attorney General and the West Virginia Division of Labor have, collectively, received at least 15 formal complaints from consumers aggrieved by the practices of the Mays. The complaints disclose that the Defendants have been engaged in the sale, delivery, installation, remodeling, and repair of used mobile homes without the required licenses from the Manufactured Housing Board and the Contractor Licensing Board. *See* White Affidavit, Exhibit 1, *supra*. The Defendants also do not have any known fixed business office or location and do not have business registration certificates from the State Tax Department. *See* email from Donna L. Purdy, West Virginia State Tax Department, Criminal Investigations Division, attached hereto as Exhibit 13.

80. In addition to operating without the required licenses, including licenses for plumbing, HVAC, and electrical work, the complaints disclose that the Defendants engaged in a wide range of violations of the WVCCPA, including the following: deceptive sales practices; sales of homes that are not fit for occupancy; faulty installation of used mobile homes, failure to make promised repairs and renovations, failure to install HVAC systems and other promised systems and appliances; failure to provide titles, and failure to return deposits when consumers exercise their right to refuse delivery of homes in that are not fit for occupancy.

81. Although all known complaints from consumers aggrieved by the actions of the Mays are summarized herein for illustrative purposes, the State's Complaint is intended

to encompass and seek equitable relief for all potential victims of the Mays, including those who may become known through the course of this litigation.

Unlawful Sale of Used Mobile Homes by Tyler May

82. In addition to all of the foregoing, staff of the Attorney General's office have compiled a partial list for illustrative purposes of used mobile homes posted for sale on Facebook by Defendant Tyler May in 2020 and 2021 without having the required licensure to sell used mobile homes. The following is a complete description of the used mobiles as posted by Tyler May on the dates indicated, including their location within Facebook as of November 5, 2021. Tyler May has continued to post used mobile homes for sales through the present.

Summary of Tyler May Facebook Postings

October 27, 2020 (Elkview, Pinch Big Chimney WV's Online Yard Sale/Classifieds) 3 bedroom 2 bathroom Double wide. Vinyl siding, shingle roof. Has large bedrooms, Double closets, master bedroom has a very good sized bathroom. Can be moved and set to your location for around **\$29,000.00**

November 17, 2020 (New and used Mobile homes for sale in WV) 3 bedroom 2 bathroom manufactured house. Metal roof, Log siding. Very appealing home. Moved and set to your location for **\$25,500.00**. Message me for more details or a number to call. Thank you

December 22, 2020 (Morgantown Facebook Yard Sale) 2 bedroom 1 bath vinyl siding shingle roof 14x70. Very clean home, tons of cabinet space. Nice kitchen, central heat and air. This house was kept in good condition. Moved and set to your location for **\$17,900.00** or best cash offer message me for more details

January 8, 2021 (Dunbar WV Yard Sale) (Summersville Yard Sale) 3 bedroom 2 bathroom double wide. Vinyl siding, shingle roof, has large bedrooms, double master closets, Master bedroom has a very good sized bathroom. Can be moved and set on location for around **\$2900.00**. The house also has a new wood stove and new hot water heater installed. Message me for more info.

January 9, 2021 (Kanawha & Putnam Yard Sale) 2005 Clayton 3 bed 1 bath mobile home, vinyl siding shingle roof, new floor coverings, all electric heat. Moved and set to your location for **\$15,900.00** or best cash offer.

January 12, 2021 (WV Mobile, Manufactured, and Modular Homes for Sale) This home is very clean and in like-new condition. 3 bed 2 bath. All electric heat and air. Ready to move

in. Comes with all appliances stove, fridge, dishwasher, etc. which are newer. Floor coverings are in great shape. The underpinning comes with the home as well. If you are looking for a move in ready home this is the one for you. You won't find a nicer cleaner used mobile home. Can be moved and set to your location within 1-2 weeks for **\$21,900** or best cash offer. Hard to respond to all messages if interested please text or call me at 304-377-2584. Thank you

January 13, 2021 (Kanawha & Putnam Yard Sale) Clean Move in ready 2 bed 2 bath mobile home. Nice for a used house, solid floors walls and ceilings, large bedrooms for a mobile home. Central Heat and air. If you are looking for a home to move in quick this would make a good one. Can be moved and set to your location in 1-2 weeks and we will supply the block for **\$15,900.00** or best cash offer. House delivery and set up, my number is 304-377-2584.

February 9, 2021 (Kanawha & Putnam Yard Sale) 3 bed 2 bath double wide. Central heat and air. Newer floor covering and appliances. House comes with all kitchen appliances, washer and dryer. Also comes with a large contained central heat and air unit. Front porch is included as well. This house is move in ready. All floors, drywall and ceilings are solid. House is currently apart and on tires ready to move. Prices include move, footers and set up **\$35,900.00**. If interested text or call me at 304-377-2584

February 13, 2021 (Kanawha & Putnam Yard Sale) 3 bed 2 bath mobile home delivered and set. Does need some work but very manageable. Floors are solid needs some dry wall work but was lived in fairly recently. Will trade the home and delivery for cars, trucks, bikes, four wheels, boats, farm equipment. Or **\$8,500.00** or best cash offer includes delivery and set. If interested message me at 304-377-2584.

February 23, 2021 (WV Mobile, Manufactured and Modular Homes for Sale) 24x44 3 bedroom 1 bath double wide for sale or trade. Must be moved from property and we can move it. Vinyl siding, newer metal roof. Will trade for newer single wide homes, diesel trucks, "1is" cars, or side by sides. Cash price is **\$29,000.00** delivered with footers and set up or best cash offer. Can owner finance with 15k down. PM me or contact me at 304-377-2584.

March 9, 2021 (Kanawha & Putnam Yard Sale) (Elkview, Pinch, Big Chimney WV's Online Yard sale/ Classifieds) 2 bed 2 bath mobile home. Metal siding, metal roof. All appliances pictured included. Will move a nice move in ready livable home. Can be delivered and set to your location within 2 weeks. **\$13,900.00** delivery and set up included. If you are interested you can contact me at 304-377-2584. Thank you.

March 22, 2021 (Kanawha & Putnam Yard Sale) 2 bed 2 bath delivered and set 14x75. **\$16,900.00**. All appliances shown included, fridge, stove, washer, dryer etc. gas stove and heat, large rooms, not perfect but in good shape for a used home. Includes delivery and set up. Message me for more info and pictures at 304-377-2584. Call if you are interested. Thank you.

March 29, 2021 (Kanawha & Putnam Yard Sale) 2 bed 2 bath mobile home. Metal siding, metal roof. All appliances pictured included. Can be delivered and set to your location within 2 weeks. **\$13,900.00** delivery and set up included. If interested you can contact me at 304-377-2584 Thank you.

April 29 & 30, 2021 (Kanawha & Putnam Yard Sale) (Summersville Yard Sale) (Oak Hill, Fayetteville and surrounding areas yard sale site) 3 bed 2 bath mobile home includes deliver and set up level. All electric, metal siding, metal roof. This house is solid has good floors, walls and ceilings. No leaks. Will need paint and floor coverings. **\$12,900.00** delivered and set up leveled message or call if interested my number is 304-377-2584 (Picture states **\$10,900.00**)

April 29 &30, 2021 (Kanawha & Putnam Yard Sale) (Elkview, Pinch & Big Chimney WV's Online Yard sale)3 bed 2 bath mobile home includes delivery and set up level 14x80 new metal tin roof. Gas furnace and stove. This is move in ready home, ceiling and floors are in great shape, appliances shown are included. Open kitchen and living room. Very nice home, hard to find a used mobile home in this shape. Delivered and leveled **\$22,900.00**. Message me if interested 304-377-2584. Thank you.

May 4, 2021 (West Virginia buy trade sale and free stuff) 2 bed 1 bath holly park Mobile. Home has a washer/dryer room that is the size of a bedroom and could potentially be used as one. Home is in decent shape does need some minor work in spots. With a little work could make a good house. Delivered and set for **\$7,900.00** or best cash offer. Call me if interested at 304-377-2584

May 13, 2021 (Kanawha & Putnam Yard Sale) (Beckley Yard Sale Page) 2 bed 1 bath Windsor home. Delivered and leveled for **\$9,800.00** electric furnace. Gas stove and water heater. Home does needs need some spots in floor and ceiling repaired. Looks well for his age. Delivered and leveled for **\$8,900.00** if interested contact me at 304-377-2584

May 14, 2021 (Summersville Yard Sale) 2 bed 1 bath holly park Mobile. Home has a washer/dryer room that is the size of a bedroom and could potentially be used as one. Home is in decent shape does need some minor work in spots. With a little work could make a good house. Delivered and set for **\$7,900.00** or best cash offer. Call me if interested at 304-377-2584. Thank you

May 19, 2021 (Beckley Yard Sale) 3 bed 2 bath Mobile home delivered and set. Was lived in recently, metal siding, metal roof, all electric. Delivered and leveled anywhere in WV for **\$12,900.00** call or message if interested 304-377-2584

June 20, 2021 (Kanawha & Putnam Yard Sale) 2 bed 2 bath mobile home delivered and leveled for **\$12,900.00**. All electric metal siding roof. If interested call me at 304-377-2584 or email me at tylerchase365@gmail.com

June 27, 28 & July 20, 2021 (New and Used Mobile Homes for Sale) (Elkview, Pinch, & Big Chimney WV's Online Yard sale /Classifieds) (Beckley Yard Sale Page) Jackson County WV – Buy Sell-Trading Post) 2011 2 bed 1 bath 14x48 mobile home delivered and leveled. Vinyl sided, shingle roof. All electric furnace and water heater. Has recently been painted will have new carpet and floor coverings. Price includes delivery and level anywhere in West Virginia. **\$21,900.00**.

August 7, 2021 (Charleston WV yard sale) (Kanawha & Putnam Yard Sale) 1983 2 bed 1 bath mobile home delivered and leveled for **\$7500.00** Floor and roof are solid. The house is a solid shell will need carpet and appliances. Delivered to your location for \$7500.00 or best cash offer

August 7, 2021 (New and Used Mobile Homes for Sale) 2 bed 1 bath 14x60 delivered and level for **\$8500.00**. Was lived in less Than 3 months ago. Floor and roof are solid. No leaks or weak spots. Message if interested

September 2 & 3, 2021 (New and Used mobile homes for sale in WV) (Jackson County WV- Buy Sell-Trading Post) (Just another Facebook yard sale) (Clendenin WV Yard Sale) (Elizabeth WV online yard sale) 3 bed 2 bath 2001 mobile home delivered and level. Vinyl siding, shingle roof almost new self-contained heat and air unit. All electrical appliances. No leaks, soft spots, or water damage. Floors and ceilings look nice and are in great shape. Underpinning included. Delivered and leveled for **\$29,900.00** if interested.

September 8, 2021 (Clendenin WV Yard Sale) (Kanawha & Putnam Yard Sale) (Elkview, Pinch, Big Chimney WV's Online Yard sale/ Classifieds) (Oak Hill, Fayetteville and surrounding areas yard sale) (West Virginia marketplace) (north central WV yard sale)* 3 bed 2 bath double wide delivered and leveled. Central Heat pump/central cooling unit included. All appliances included. Solid Floors, metal roof, large bedrooms, good condition for used home. Message me for pricing if interested 304-377-2584 **\$123,456.00**

October 9 & 10, 2021 (Kanawha & Putnam Yard Sale) (Elizabeth WV online yard sale) 2005 16x50 2 bed 2 bath mobile home delivered and leveled for **\$21,900** metal siding, metal roof, all electric. Message if you are interested 304-377-2584.

October 10, 2021 (New and Used mobile homes for sale in WV sale) (Jackson County WV-Buy-Sell Post-) 2005 2 bed 2 bath mobile home delivered and leveled for **\$19,900** metal siding, metal roof, all electric. Message if you are interested 304-377-2584. (Same mobile home as above but \$1000.00 dollars less)

October 13, 2021 (Jackson County WV-Buy-Sell Post-) (Summerville Yard Sale) (Wirt County Online Yard Sale) (WV marketplace) 2 bed 2 bath mobile and leveled for **\$3900.00**. Needs floor work. Exterior is good. Message if interested.

October 13 & 14, 2021 (Charleston WV yard sale) (New and Used mobile homes for sale in WV) (Beckley Yard Sale) 2 bed 1 bath mobile home for sale gas furnace. Need some work sold as, delivered and leveled. **\$4900.00**

October 20 & 21, 2021 (New and Used mobile homes for sale in WV) (West Virginia Man cave) (Wirt County Online Yard Sale) (Summerville Yard Sale) (Elizabeth WV online yard sale) (Jackson County WV - Buy Sell- Trading Post) 3 bed 1 bath, metal siding and roof. Gas stove, furnace, and hot water heater. Solid floors and ceiling, no leaks. **\$12,900.00**.

October 23, 2021 (Elkview, Pinch, & Big Chimney WV's Online Yard sale/Classified) (West Virginia Online trading and sales) (Just another Facebook yard sale) (Putnam and Kanawha County Yard sale) 3 bed 2 bath double wide delivered, footers and leveled. 28x56. Message me for more information and pricing or call me at 304-377-2584 **\$1,234,567**

October 31, 2021 (New and used mobile Homes for Sale in WV) 2 bed 2 bath 14 x70 Mobile home. Vinyl siding shingle roof. Move in ready **\$19,900.00** delivered to your location and leveled. Cash sale or payments. If interested call me 304-377-2584 or 304-904-7637.

83. Screen shots corresponding to the foregoing Facebook postings by Tyler May are attached hereto as Exhibits 14 – 26, respectively.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Engaging in the Sale, Installation, Repair and Remodeling of Used Mobile Homes without a Business Registration Certificate from the State Tax Department)

84. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

85. Engaging in the sale, installation, repair and remodeling of used mobile homes without a business registration certificate from the State Tax Department as required by W. Va. Code §11-12-4 is an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

86. The Mays have engaged in the sale, installation, repair and remodeling of used mobile homes in West Virginia repeatedly and willfully without the required business registration certificate from the State Tax Department since at least 2009 through the present.

87. Each instance in which engaged in the sale, installation, repair or remodeling of a used mobile home without the required business registration certificate from the State Tax Department constitutes an unfair or deceptive act or practice, in violation of W. Va. Code § 46A-6-104.

SECOND CAUSE OF ACTION
(Engaging in the Sale, Installation, Repair, and Remodeling of Used Mobile Homes
without the Required Licenses from the Manufactured Housing Board and the
Contractor Licensing Board)

88. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

89. A person or entity who engages in the sale, installation, repair, or remodeling of used mobile homes without the requires licenses from the Manufactured Housing Board and the Contractor Licensing Board, W. Va. Code § 221-9-9 and W. Va. Code § 21-11-6(a, has committed an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-104.

90. The Mays have repeatedly and willfully engaged in the sale, installation, repair and remodeling of used mobile homes without the required licenses from the Manufactured Housing Board and the Contractor Licensing Board.

91. The Mays engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when they sold, installed, repaired, or remodeled a used mobile home with the required licenses from the Manufactured Housing Board and the Contractor Licensing Board.

THIRD CAUSE OF ACTION
(Falsely representing to the Public that they are Licensed to Sell, Install,
Repair, and Remodel Used Mobile Homes)

92. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

93. The representation that one is licensed to engage in a regulated activity when such is not the case 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.

94. The Mays represented to the public, directly, indirectly, and implicitly, that they are licensed to engaged in the sale, installation, repair, and remodeling of used mobile homes when such is not the case.

95. The Mays engaged in 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 in each instance when they led the public to believe that they are licensed to engage in the sale, installation, repair and remodeling used mobile homes when such is not the case.

FOURTH CAUSE OF ACTION
(Engaging in Plumbing, Electrical, and Plumbing Work
without the Required Licenses)

96. The State reasserts each and every allegation in paragraphs 1 through 83 in his Complaint as if set forth fully herein.

97. A person may not engage in plumbing work directly, or contract such work out to others, unless such person has a general contractor's license or a specialty plumbing license from the Commissioner of Labor as required by W. Va. Code § 21-14-3(a). When the plumbing work may contracted out to another, the person doing the plumbing work must also have a plumbing license.

98. A person may not engage in the provision of HVAC work directly, or contract such work out to others, unless such person has a general contractor's license or a specialty HVAC license from the Commissioner of Labor as required by W. Va. Code § 21-16-3(a). When HVAC work may be contracted out to another, the person doing the HVAC work must also have the required HVAC license.

99. A person may not engage in the provision of electrical work directly, or contract such work out to others, unless such person has a general contractor's license or a

specialty electrician's license and certificate from the State Fire Marshall as required by W. Va. Code § 29-3B-1 and § 29-3B-2, respectively. When such work may be contracted out to another, such person must also have the required license and certificate.

100. The Defendants engaged in the provision of plumbing, HVAC, and electrical work directly and through others without the required licenses.

101. Each instance in which the Defendants engaged in the provision of plumbing, HVAC, and electrical work directly or by contracting the work out to others without the required licensed constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

**FIFTH CAUSE OF ACTION
(Failing to Transfer Titles to Mobile Homes)**

102. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

103. Failure to transfer the title to the buyer of a mobile home within 60 days as required by W. Va. Code §17A-4-4 constitutes an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-104.

104. In an unknown number of instances, the Mays have failed to transfer titles to used mobile homes sold to consumers within 60 days after the sale and sometimes failed to transfer the title at all, thereby rendering the home not merchantable.

105. The Mays engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when they sold a used mobile home to a consumer and failed to transfer the title to the consumer within 60 days or at all.

SIXTH CAUSE OF ACTION
(Selling Used Mobile Homes that are not Merchantable)

106. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

107. A merchant engaged in the sale of goods to consumers has an obligation to ensure that the goods it sells conform in all respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components that the goods are in good working order and will operate properly in normal usage for a reasonable period of time, W. Va. Code § 46A-6-102(c). This obligation, known as the implied warranty of merchantability, cannot be waived, W. Va. Code § 46A-6-107.

108. The sale of used mobile homes that are not merchantable violates the implied warranty of merchantability and constitutes an unfair or deceptive act or practice, W. Va. Code § 46A-6-107 and W. Va. Code § 46A-6-104, respectively.

109. The Mays have repeatedly and willfully sold used mobile homes that are not in a fit and habitable condition and that do not otherwise meet established standards of quality and safety so as to be deemed merchantable.

110. The Mays engaged in an unfair or deceptive act of practice and failed to meet its obligations under the implied warranty of merchantability in violation of W. Va. Code § 46A-6-104 and W. Va. Code § 46A-6-107 in each instance when it sold used mobile homes that were not merchantable.

SEVENTH CAUSE OF ACTION
(Failing to Make Promised Repairs or Fulfill Other Obligations of Contracts)

111. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

112. The failure to make promised repairs or to substantially fulfill other obligations under contracts for the sale of used mobile homes violates the Home Improvement Rule, W. Va. C.S.R. § 142-3.1.8.

113. Any violation of the Home Improvement Rule constitutes an unfair or deceptive act or practice, W. Va. C.S.R. § 142-5-1.7, in violation of W. Va. Code § 46A-6-104.

114. The Mays failed to make promised repairs specified in contracts, failed to deliver and install homes in a timely or proper manner, failed to install appliances, and failed to perform remodeling specified under contracts for the sale of used mobile homes.

115. The Mays violated the Home Improvement Rule and engaged in an unfair or deceptive act or practice, in violation of W. Va. C.S.R. § 142-3.1.8 and W. Va. Code § 46A-6-104, respectively, in each instance when it failed to deliver and install homes in a timely or proper manner, failed to install appliances, failed to perform remodeling, and failed to fulfill other obligations specified in contracts for the sale of used mobile homes.

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

116. The State reasserts each and every allegation in paragraphs 1 through 83 in this Complaint as if set forth fully herein.

117. The FTC Rule requires that a seller furnish consumers with notice of their right to cancel within three business days after the transaction whenever agreements for the sale of goods

or services are entered into at consumers' homes or at a place other than a seller's place of business.

118. Any failure to comply with the FTC Rule is an unfair or deceptive act or practice, 16 C.F.R. §429.1, and constitutes an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-104.

119. The Mays did not have a regular place of business and almost always entered into contracts with consumers at their homes or at other places without furnishing consumers with notice of the three-day right to cancel as required by the FTC Rule.

120. The Mays engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when they entered into contracts for the sale, installation, repair or remodeling of used mobile homes without furnishing consumers with notice of the three-day right to cancel as required by the FTC Rule.

PRAYER

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

(a) finding that the Defendants have violated the WVCCPA as alleged herein and permanently enjoining the Defendants, and anyone acting for or on their behalf, from violating the WVCCPA and from engaging, directly or indirectly, in the sale, installation, repair, or remodeling of used mobile homes or in the provision of home improvement services as the owner of a business, as an employee, agent, subcontractor, or in any capacity, in any manner, or at any time or place whatsoever within the State of West Virginia;

(b) finding that the Defendants have engaged in a course of repeated and willful violations of the WVCCPA as alleged in the causes of action set forth herein above and

assessing a civil penalty of up to \$5,000.00 against the Defendants, jointly and severally for each such violation as authorized by W. Va. Code § 46A-7-111(2);

(c) finding that all agreements entered into by the Defendants with consumers for the sale, installation, repair, or remodeling of used mobile homes are VOID and that the consumers shall maintain ownership of all homes, appliances, and fixtures purchased from Defendants as well as the benefit of any services provided without penalty;

(d) requiring Defendants to provide clear titles with liens released to all consumers who purchased used mobile homes from them;

(e) awarding the State a judgment against the Defendants for all amounts they collected from any consumer for the sale, installation, repair, or remodeling of used mobile homes or the provision of related home improvement services, including those consumers presently known and those who may become known to the State during the course of this litigation;

(f) finding that the Defendants are engaged in a joint venture in the sale, installation, repair, and remodeling of used mobile homes and the provision of related home improvement services, for profit, and that they are jointly and severally liable for all violations of the WVCCPA arising from the joint venture;

(g) awarding the State a judgment for all its costs, including reasonable attorney's fees, incurred in the investigation and litigation of this matter as authorized by W. Va. Code § 46A-7-108; and

(h) 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

/s/ Norman Googel

Norman Googel (WV State Bar # 1438)
Senior Assistant Attorney General
Ashley T. Wentz (WV State Bar #13486)
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: Norman.A.Googel@wvago.gov
Ashley.T.Wentz@wvago.gov