



West Virginia E-Filing Notice

CC-41-2022-C-229

Judge: Darl Poling

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NOTICE OF FILING

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA
Attorney General v. Jerry Smales and Altrucon, Inc. dba Mountaineer Plumbers and Beckley
Plumbers
CC-41-2022-C-229

The following complaint was FILED on 7/15/2022 12:40:32 PM

Notice Date: 7/15/2022 12:40:32 PM

Paul H. Flanagan
CLERK OF THE CIRCUIT COURT
Raleigh County
222 Main Street
BECKLEY, WV 25801

(304) 255-9135
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COVER SHEET

E-FILED | 7/15/2022 12:40 PM
CC-41-2022-C-229
Raleigh County Circuit Clerk
Paul H. Flanagan

GENERAL INFORMATION

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

Attorney General v. Jerry Smales and Altrucon, Inc. dba Mountaineer Plumbers and Beckley Plumbers

First Plaintiff: Business Individual Government Other
First Defendant: Business Individual Government Other

Judge: Darl Poling

COMPLAINT INFORMATION

Case Type: Civil

Complaint Type: Other

Origin: Initial Filing Appeal from Municipal Court Appeal from Magistrate Court

Jury Trial Requested: Yes No **Case will be ready for trial by:** _____

Mediation Requested: Yes No

Substantial Hardship Requested: Yes No

Do you or any of your clients or witnesses in this case require special accommodations due to a disability?

- Wheelchair accessible hearing room and other facilities
- Interpreter or other auxiliary aid for the hearing impaired
- Reader or other auxiliary aid for the visually impaired
- Spokesperson or other auxiliary aid for the speech impaired
- Other: _____

I am proceeding without an attorney

I have an attorney: Norman Googel, PO Box 1789, Charleston, WV 25326

SERVED PARTIES

Name: Jerry Smales and Altrucon, Inc. dba Mountaineer Plumbers and Beckley Plumbers

Address: 248 Antonio Ave 1038 N. Eisenhower Drive #121, Beckley WV 25801

Days to Answer: 20 **Type of Service:** Filer - Private Process Server

IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

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

Plaintiff,

v.

Civil Action No. _____
Judge _____

**JERRY SMALES and ALTRUCON, INC
dba Mountaineer Plumbers and Beckley
Plumbers,**

Defendants.

**COMPLAINT FOR INJUNCTION, CONSUMER RESTITUTION,
DISGORGEMENT, CIVIL PENALTIES, AND OTHER APPROPRIATE 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, Jerry Smales and Altrucon, Inc. dba Mountaineer Plumbers ("Smales") 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 plumbing and other home improvement contracting services.

2. Defendant Jerry Smales resides at 245 Antonio Avenue, Beckley, WV 25801. Smales is and was the owner of Mountaineer Plumbers and the President of Altrucon, Inc. at all times pertinent hereto.

3. Altrucon, Inc. (“Altrucon”) is a for-profit West Virginia corporation established by Smales and Kala Helmick on August 31, 2017. Records on file with the WV Secretary of State Office show Altrucon’s address as 1038 N. Eisenhower Drive #121, Beckley, WV 25801, which is a private mail box located at The UPS Store. See Exhibit 1 attached hereto. Altrucon’s “DBAs” or trade names include, but may not be limited to, Altrucon, Beckley Electrician, Beckley Plumbers, Beckley Services, Mountaineer Plumbers, Pro Electrician, and Strategic Enterprises. Exhibit 1.

4. Smales and Altrucon engaged in the sale and provision of plumbing services to consumers at their homes under the fictional name “Mountaineer Plumbers” and “Beckley Plumbers” at all times pertinent hereto. Mountaineer Plumbers and Beckley Plumbers had no known physical address other than the residence of Smales.

5. Upon information and belief, actions by Smales would allow for piercing the corporate veil and allow for personal liability for the unlawful acts which are the subject of this Complaint.

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. Complaints filed with the Attorney General and with the Beckley Police Department (“BPD”) disclose that Smales has engaged directly and indirectly through others in the sale and provision of plumbing services to consumers in West Virginia without the required licenses from West Virginia Division of Labor, Contractor Licensing Board. *See* Affidavit of Kathy Rucker, Licensing Section Manager, WV Division of Labor (“Rucker Affidavit”), attached hereto as Exhibit 2.

9. When consumers complained about services paid for but not provided, Smales trolled them online, bullied and harassed them with fake court documents and false threats of legal action, and subjected them to other abusive collection practices in violation of the WVCCPA.

10. Smales failed to resolve the complaints or cease his unlawful practices, which necessitated the filing of this complaint.

IV. BACKGROUND AND APPLICABLE LAW

General Consumer Protections

11. In 1974, the Legislature enacted the WVCCPA, 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 Owners Association, Inc.* 772 S.E. 2d 369, 377 (W. Va. 2015) (citations omitted). 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.

12. 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).

13. 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 this state,” W. Va. Code § 46A-6-102(6) (emphasis added).

14. The sale and provision of plumbing and related contracting services to natural persons for a personal, family, household or agricultural purpose constitute “consumer transactions” as defined by W. Va. Code § 46A-6-102(2). As such, Smales is subject to the regulatory authority of the Attorney General under the WVCCPA as set forth in W. Va. Code § 46A-7-102(1).

15. In order to meet its obligation to enforce the WVCCPA, the Legislature authorized the Attorney General 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 reimbursement of 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.”

Unfair or Deceptive Acts or Practices

16. 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).

Home Improvement Contracting

17. 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 (“Licensing Board”) Legislative Rule, W. Va. C.S.R. §§ 28-2-1 *et seq.* The WVCLA 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 § 30-42-3(d).¹

18. 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 (“Board”) or aid or abet any other person to do so, W. Va. Code § 30-42-6(a) and W. Va. Code § 30-42-15(g)(9), 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.

19. The term “plumbing” means:

¹ Effective June 15, 2021, the Legislature raised the threshold for requirement of a contractor license from \$2,500.00 to \$5,000.00 and moved the Contractor Licensing Act from Chapter 21 to Chapter 30 of the West Virginia Code.

[T]he practice, materials, and fixtures utilized within a building in the installation, extension, and alteration of all piping, fixtures, water treatment devices, plumbing appliances and appurtenances, in connection with sanitary drainage or storm drainage facilities; the plumbing venting systems; medical gas systems; fuel oil and gas piping for residential, commercial, and institutional facilities; backflow preventers; and public or private water supply systems, as defined by the state building code.

See W. Va. Code § 21-14-2(e).

20. 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 license from the Commissioner of Labor on or after January 1, 2009, W. Va. Code § 21-14-3(a). The person performing the plumbing service must carry a copy of the license on any job in which plumbing is being performed, W. Va. Code § 21-14-3(b). Unlike the requirement for a general contractor’s license, a plumbing license is required without regard to the cost of the job.

Relevant Debt Collection Provisions

21. The WVCCPA governs the conduct of **all** debt collectors, including creditors collecting their own debts. See W. Va. Code § 46A-2-122(d). See also *Firestone Tire and Rubber Co.*, 266 S.E.2d 905 (W.Va. 1980).

22. The WVCCPA proscribes a wide range of conduct that it deems illegal, fraudulent, unconscionable, unfair, or deceptive in consumer transactions, including conduct related to the collection of debts, which is found generally in W. Va. Code § 46A-2-122 through 129(a).

23. The WVCCPA also prohibits a debt collector from collecting, attempting to collect, or representing that it can collect any kind of collection fee or charge for services

rendered, however denominated, including attorney's fees, unless "expressly authorized by the agreement and by statute" (emphasis added). W. Va. Code § 46A-2-128(d). *See generally* W. Va. Code § 46A-2-127(g), W. Va. Code § 46A-2-128(c), and W. Va. Code § 46A-2-128(d).

The FTC Rule

24. 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).

25. The term "door-to-door sale" includes sales of consumer goods or services that take place at the consumer's residence or at a place other than the place of business of the seller, 16 C.F.R. § 429.0(a). Since most home improvement contracts are entered into at the consumer's home, the service provider must comply with the FTC Rule.

26. In order to comply with the FTC Rule, the service provider must notify the consumer of the right to cancel in three ways: (a) orally; (b) by inclusion of a specified statement informing the consumer of the right to cancel in the sales contract or invoice in immediate proximity of the place for the consumer's signature; and (c) by provision of a separate, detachable "notice of cancellation" in duplicate for the consumer to sign and return if they elect to cancel. 16 C.F.R. § 429.1(a) and (b).

27. The failure to comply with any provision of the FTC Rule constitutes an unfair or deceptive act or practice, 16 C.F.R. § 429.1(a)–(i). As such, the failure to comply with any requirement of the FTC Rule is an unfair or deceptive practice in violation of the WVCCPA, W. Va. Code § 46A-6-104.

Piercing the Corporate Veil

28. Piercing the corporate veil normally requires a two-prong test: “(1) [T]here must be such unity of interest and ownership that the separate personalities of the corporation and of the individual shareholder(s) no longer exist (a disregard of formalities requirement) and (2) an inequitable result would occur if the acts are treated as those of the corporation alone (a fairness requirement).” See Syl. Pt. 3, *Laya v Erin Homes, Inc.* 352 S.E.2d 93, 94 (W. Va. 1986).

V. STATEMENT OF FACTS

29. The State was first alerted to the practices of Smales by an exposé about an alleged plumbing scam aired by WVVA-TV of Bluefield on August 28, 2020 and a criminal investigation conducted by the Beckley Police Department. Based upon information from these sources, and complaints filed with the Attorney General, at least seven consumers have been victimized by Smales. The complaints of Smales’ victims are summarized below.

Complaint of Summer Bivens of Beckley, WV

30. Ms. Bivens called the number for Mountaineer Plumbers on or about August 17, 2020, at which time she asked Smales if he could fix a clogged kitchen sink at her home in Beckley. Smales told her he could send someone out that day but advised that she must pay \$125.00 in cash when the plumber arrived, which she did.

31. Smales dispatched Patrick R. White, who worked on her clogged sink over the course of two days before finally stating that the problem was fixed and prepared to leave. As soon as White left, she discovered that the problem was not fixed. She hired Arnold Lambert, of A.L. Handyman, Shady Spring, WV, to finally fix her problem at an additional cost of \$820.00.

32. The Licensing Board confirmed that Patrick R. White is not a licensed plumber.
See Rucker Affidavit.

Complaint of Angela Gunter-Forren of Beckley, WV

33. Ms. Gunter-Forren says her husband contacted Smales on August 18, 2019, because her hot water heater was leaking. Smales promised to dispatch some workers the next morning. The next day, Smales sent "Mark," "Ivan," and another man to her home to address the complaint. She does not know the full names of any of these workers.

34. Mark told her she needed a new water heater. She agreed to this and Smales' workers ordered a new water heater from Lowe's which they installed at her home. Smales' workers left at 3 p.m. and told her she'd have hot water in a few hours but she called them at 8 p.m. to say she still had no hot water. Her husband called Ivan, who told him to adjust the thermostat and they would have hot water by morning.

35. The next day they still had no hot water and Smales' workers agreed to return. They insisted that the water heater was installed properly and said the water heater must be defective without actually checking it. Smales' workers insisted that the water heater could only be returned to the manufacturer and not to Lowe's but offered to sell her another hot water heater that they would install for an additional cost.

36. At this point, she called the manufacturer, whose representative suggested three trouble shooting steps to take but the workers refused to do the trouble shooting. Although the workers finally offered to remove the water heater, she no longer trusted them and feared she would not see the water heater again or the money she paid for it. Therefore, she decided to keep the water heater and asked the workers to leave.

37. She then called Maxwell and Keyser Plumbing (“Maxwell”) of Beckley, which sent a plumber out who diagnosed the problem within moments after arrival. Maxwell’s plumber said Smales’ workers burned out the heating element by turning it on before it was full of water. Maxwell’s plumber had the heater working within 30 minutes and charged her \$130.00 for the service.

38. Although the heater was now working, Ms. Gunter-Forrens’ difficulties with Mountaineer Plumbers were not over. She was initially charged a total of \$1,293.00 for Smales’ services, which consisted of \$493.00 for the water heater and \$800.00 for installation. She paid both charges by separate checks. However, after she determined that the water heater was not installed properly, she paid a fee of \$36.00 to her bank to stop payment on the \$800.00 check.

39. Upon learning of the stop payment order, Smales sent her a letter titled “Notice of Pending Legal Action” that threatened she would be liable for “thousands of dollars” in “legal fees alone” unless she made good on the check within three business days. The Notice of Pending Legal Action is attached hereto as Exhibit 3. Not knowing her legal rights, she caved in to the intimidation and agreed to pay the disputed \$800.00 charge plus an additional “dishonored check fee” of \$100.00 that Smales tacked on to the bill.

40. Smales never furnished Ms. Gunter-Forren with any written contract other than a receipt from Lowe’s for purchase of the hot water heater. After Smales’ workers left her home and she had a chance to look at the receipt more closely, she saw that the actual cost of the hot water heater was \$386.10 and that Smales charged her an additional \$56.68 to purchase the hand truck/dolly that his workers used to deliver the heater. Since she paid for the dolly, she believes it belongs to her. However, Smales’ workers took the dolly with them when they left her home.

Complaint of Kimberly Dillard of Beckley, WV

41. Ms. Dillard and her husband called Smales in February 2020 to fix a sewage backing problem at their house. After some postponements, Smales and “Dave” came to her house on February 12, 2020. They brought the wrong augur and were not able to fix the problem but still charged them \$667.88 for the service. Smales promised to return the next day with the correct augur.

42. When Smales and Dave returned, they demanded payment of another \$640.93 in advance, which they paid, reluctantly. Smales still failed to fix the problem but offered to return again with a camera for an additional charge of \$600.00. Since Smales could not fix the problem after they had paid him \$1,301.68, they asked Smales not to return.

43 Smiles had a gun at his side while he was in their home. She also observed that while Dave did the “hands on” work, he acted on Smales’ instructions the entire time.

Complaint of Mark and Patricia Morgan of Beckley

44. The Morgans called Smales on July 31, 2020 for service when their sewage backed up into their home through a drain in the basement. Smales agreed to send someone out for a service charge of \$125.00, which they agreed to pay.

45. Smales sent a man they later determined to be Patrick R. White, who arrived with no tools other than a newly purchased electric snake that was still in the box. White did not know how to assemble or use the snake so Mark assembled the snake and showed him how to use it. Mark also had to put his hands into the sewage in order to get the snake started.

46. Despite working three hours, White did not solve the problem. White then called Smales on the phone in the Morgans’ presence and Smales instructed White to charge them \$600.00 for the “service.” Mr. Morgan wrote a check for \$500.00 after concluding that they were

not capable of fixing their problem. Someone from Smales' office called the next day and offered to send someone out to try again for an additional charge but the Morgans declined to pay any more money to Smales for service he was incapable of providing.

Complaint of John Ross of Freeman, WV

47. Mr. Ross called Mountaineer Plumbers on December 18, 2018 to unstop a sewer drain. That evening a man arrived at about 3 p.m. with no tools other than a cordless drill with a 25-foot sewer tape. He then left to go to Bluewell to purchase a replacement device. He worked until about 7 pm but could not unstop the drain. He charged \$284.00 for his "service," which Mr. Ross paid, even though he failed to fix the problem.

48. On December 31, Mr. Ross rented an augur from United Rental in Princeton for \$65.00. After one hour of work, he fixed the problem himself. He asked Smales for a refund, but Smales refused.

Complaint of Ben Everette of Beckley

49. Mr. Everette contacted Mountaineer Plumbers on or about December 2, 2019 to request assistance with a clogged sink in his home.

50. Smales said he could do the job and promised to send out a worker. He also said the job would require a "snake" at a cost of approximately \$300.00. Smales dropped off a worker at Mr. Everette's house later that day.

51. Smales' worker allegedly ran the snake and said the drain had been cleared. However, Mr. Everette found out later that the drain was still clogged.

52. Smales came to pick up his worker and demanded payment of \$642.00, even though his initial estimate was approximately \$300.00 and the drain was still clogged. Against his better judgment, he paid Smales by charging the \$642.00 to his credit card.

53. Since his sink was still clogged, he contacted Maxwell & Keyser Plumbing-Heating of Beckley, West Virginia, who sent a plumber to his home and fixed his sink for approximately \$350.00. Their plumber informed him that Smales' worker did not put the sink back together properly.

54. Given his poor experience with Mountaineer Plumbers and Smales, he posted a one-star Google review online for Mountaineer Plumbers on or about December 17, 2019 to warn the public of his negative experience with this company. Shortly after the negative review was posted, Smales called and asked him to remove the review. When Mr. Everette refused to remove the review, Smales threatened him and accused him of lying.

55. On or about January 22, 2020, a person believed to be acting for Smales left a door hanger at his home while he was away. The door hanger contained a hand-written note that instructed him to "Call Officer Brown."

56. On or about January 23, 2020, a document with Smales' printed name and address at the end was personally delivered to Mr. Everette at his place of employment. The document stated "IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA / NOTICE OF PENDING LEGAL ACTION and was titled WARNING CEAST (sic) AND DESIST DEMAND." A true copy of the document is attached hereto as Exhibit 4.

57. The document simulated a court document although no lawsuit was filed. The document was also filled with nonsensical legal jargon, false statements, and threats of money damages intended to intimidate him into removing the online review.

58. Mr. Everette did not give in to Smales' threats, which he believed to be a bluff, and refused to remove the review.

59. Shortly after he received the threatening document, Mr. Everette checked and saw that Smales had removed the Mountaineer Plumbers listing from the Google directory where he had posted the review.

Complaint of Larkin C. Calhoun, Jr. of Beckley

60. Mr. Calhoun found Smales online, through a listing for Mountaineer Plumbing, and hired him on May 1, 2022, to unclog his main sewer line. Smales insisted that he pay \$622.47 in advance of the service, which he paid electronically.

61. Smales personally came to his house accompanied by another man whose name he did not know. He asked Smales if he was a licensed plumber and Smales said that he was but Mr. Calhoun later learned that was not true.

62. Smales used a 75 foot snake to try to unclog the line but his effort were unsuccessful. Smales offered to return the next day with a 100 foot snake for an additional charge of \$1,250.00 but Mr. Calhoun declined as it was evident that Smales and his co-worker were not capable of doing the job.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

(Engaging in the Provision of Plumbing Services without a Plumbing License)

63. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

64. Any person who engages in the direct provision of plumbing services must have a plumbing license as required by W. Va. Code § 21-14-3(a) regardless of the cost of the job and must carry the license on any job in which the plumbing is being performed, W. Va. Code § 21-14-3(b).

65. As the owner of a plumbing business, Smales was not required to have a plumbing license so long as the persons he dispatched to perform the direct plumbing services have the required license. *See* Rucker Affidavit.

66. Smales repeatedly and willfully dispatched persons to provide plumbing services for consumers at their homes while neither Smales nor any of the persons he dispatched had a plumbing license as required by W. Va. Code § 21-14-3(a).

67. Smales personally supervised and directed the unlicensed plumbing work over the telephone and, in some instances, while he was also present in the consumer's home.

68. Each instance in which Smales dispatched unlicensed persons to perform plumbing services for consumers at their homes or directed the actions of the unlicensed persons constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 47A-6-104.

SECOND CAUSE OF ACTION
(Aiding and Abetting the Unlicensed Provision of Plumbing Services)

69. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

70. The Contractor Licensing Act prohibits any person from willfully or deliberately acting with the intent to evade, aiding or abetting, or combining or conspiring with any person to evade the requirements of the Contractor Licensing Act, W. Va. Code § 30-42-15(g)(9).

71. Smales repeatedly and willfully acted with intent to evade the provisions of the Contractor Licensing Act by dispatching persons to consumers' homes who were not licensed to perform plumbing services, and thereby aided and abetted the unlicensed provision of plumbing, in violation of W. Va. Code § 30-42-15(g)(9).

72. Each instance in which Smales aided and abetted others to evade the Contractor Licensing Act by sending unlicensed persons to perform plumbing services constitutes an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104.

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

73. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

74. The FTC Rule requires provision of notice of the three-day right to cancel in the sale of goods or services valued at \$25.00 or more to consumers when the contract is entered into with consumers at their homes, 16 C.F.R. § 429.0(a).

75. The FTC Rule does not apply when the consumer initiates the contact for the purpose of repairing or performing maintenance on personal property, 16 C.F.R. § 429.0(a)(5), but does apply when additional goods or services are sold. *Id.*

76. Smales failed to furnish Angela Gunter-Forren with notice of the three-day right to cancel as required by the FTC Rule when he concluded that her hot water heater could not be repaired and sold her a new hot water heater. *See* Complaint, ¶¶ 35–42, *supra*.

77. Smales engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 when he failed to furnish Angela Gunter-Forren with notice of the three-day right to cancel and **in each instance** when he sold additional goods or services to other consumers as distinguished from performing maintenance or repairs on their personal property.

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

78. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

79. Smales represented to the public that Mountaineer Plumbers could provide plumbing services even though he knew that neither he nor his workers were licensed or capable of performing the services.

80. Smales repeatedly and willfully charged substantial fees to consumers for services that neither he nor his workers were capable of performing, and in fact did not perform, and then refused to make refunds when consumers complained.

81. Smales engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when he charged a fee to consumers for services that neither he nor his workers were capable of performing and in fact did not perform.

FIFTH CAUSE OF ACTION
(Use of Written Communications Falsely Simulating a Court Document)

82. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

83. A debt collector may not use any fraudulent, deceptive, or misleading representation or means to collect an alleged debt, W. Va. Code § 46A-2-127.

84. Specifically, a debt collector may not use or distribute any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval, W. Va. Code § 46A-2-127(f).

85. Smales issued written communications to Angela Gunter-Forren and Ben Everette that simulated and were falsely represented to be a document issued by or filed with a court, in violation of W. Va. Code § 46A-2-127(f). *See Exhibits 3 and 4, supra.*

SIXTH CAUSE OF ACTION
(False Threats to Take Actions not Intended or Prohibited by Law)

86. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

87. No debt collector may engage in threats, coercion, or attempts to coerce as a means to collect alleged debts, W. Va. Code § 46A-2-124.

88. In his written communication to Angela Gunter-Forren, Exhibit 3, Smales made multiple false threats intended to intimidate and coerce her to drop her legitimate complaint, including the following:

(a) Smales represented falsely to Gunter-Forren that the document constituted a mechanics lien which he had filed against her home, when such was not the case and he had no intention or legal right to file a mechanics lien;

(b) Smales “ordered” Gunter-Forren to pay \$900.00 to Beckley Plumbers when he had no legal authority to do so;

(c) Smales demanded payment of an additional “100.00 check fee” from Gunter-Forren when no such fee is authorized by law;

(d) Smales threatened falsely that the amount owed by Gunter-Forren would increase by “thousands of dollars (referring to legal fees)” if the amount demanded was not paid in full “within three business days,” when such fees were not authorized by law;

(e) Smales threatened Gunter-Forren falsely that “[e]nforced collection on this obligation will result in additional charges, legal fees ... and will impair [her] credit rating,” when such fees and threatened actions were not intended or authorized by law; and,

(f) Smales threatened Gunter-Forren falsely that her actions “will be provided to all applicable credit reviewing and granting authorities,” when such actions were not intended.

89. In his written communication to Ben Everette, Exhibit 4, Smales made multiple false threats intended to intimidate and coerce him into deleting an accurate statement Everette had posted online concerning Smales, including the following:

(a) Smales threatened falsely that Everette committed “wrongful (tortious) interference and disparagement against [Smales’] business for which Smales would sue him and collect “treble damages” when he had no intention of doing so and no such claim was authorized by law;

(b) Smales peppered his written communication with citations to irrelevant court cases to intimidate Everette into believing he had a valid legal claim against him;

(c) Smales stated falsely that “his level of income has (sic) went down” and that his business opportunities went down from 36 to 16 in one week as a result of Everette’s online post to mislead Everette into believing that Smales had a legitimate claim of damages against him;

(d) Smales stated falsely that Everette would “forfeit property, tracks [sic] of land” if he did not have the money to pay a potential jury verdict;

(e) Smales “ordered” Everette to delete his online post “immediately” though he lacked legal authority to do so;

(f) Smales threatened falsely that “a hearing on the above-styled case will be scheduled at the circuit court” if Everette failed to delete the post “by the end of the day,” when the written communication was merely a simulated court document and no lawsuit was filed or pending; and,

(g) Smales also threatened falsely to send “another Sheriff’s summons” if Everette fails to delete the online post “immediately:”

90. Each false threat or wrongful attempt to coerce made by Smales in his written communications to Gunter-Forren and Everette, Exhibits 3 and 4, constitute separate violations of W. Va. Code § 46A-2-124 and its subparts.

**SEVENTH CAUSE OF ACTION
(Threats to Collect Unlawful Fees and Charges)**

91. The State reasserts each and every allegation in paragraphs 1 through 62 in this Complaint as if set forth fully herein.

92. The WVCCPA prohibits a debt collector from collecting, attempting to collect, or representing that it can collect any kind of collection fee, however denominated, including attorney's fees, unless “expressly authorized by the agreement **and** by statute” (emphasis added). *See generally* W. Va. Code § 46A-2-127(g), W. Va. Code § 46A-2-128(c), and, W. Va. Code § 46A-2-128(d). Since the denominated fees are not authorized by statute (except in the limited circumstance of collecting delinquent educational loans), they cannot be added to the principal in the collection of alleged debts.

93. Smales attempted to coerce payment of alleged debts by threatening, falsely, that failure to pay so would result in imposition of various impermissible fees, including the following:

(a) Smales demanded payment of an additional “100.00 check fee” from Gunter-Forren when she stopped payment on a check through her bank (which is not a dishonored check) and when the maximum fee for a dishonored check is \$25.00, W. Va. Code § 61-3-39e, Exhibit 3;

(b) Smales represented falsely that the amount owed by Gunter-Forren would increase by “thousands of dollars (referring to legal fees)” if the amount demanded was not paid in full “within three business days”, Exhibit 3; and,

(c) Smales represented falsely to Gunter-Forren that “[e]nforced collection on this obligation will result in additional charges, legal fees . . .,” Exhibit 3.

94. Each instance in which Smales collected, attempted to collect, or represented that he could collect check fees, collection fees, attorney’s fees, and any other such fees, however denominated, constitutes a separate violation of W. Va. Code § 46A-2-127(g), W. Va. Code § 46A-2-128(c), and W. Va. Code § 46A-2-128(d).

PRAYER

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

(a) finding that Smales has violated the WVCCPA as alleged herein and permanently enjoining Smales, and anyone acting for or on his behalf, from violating the WVCCPA and from engaging, directly or indirectly, in the provision of plumbing or related contracting services as the owner of a business, or as an employee, agent, subcontractor, or in any capacity;

(b) finding that Smales has engaged in a course of repeated and willful violations of the WVCCPA as alleged in the causes of action set forth herein above and that Smales be assessed a civil penalty of up to \$5,000.00 payable to the State for each violation as authorized by W. Va. Code § 46A-7-111(2);

(c) finding that all contracts entered into by Smales with consumers to provide plumbing and related contracting services are void and unenforceable;

(d) awarding the State a judgment against Smales in the amount of \$5,766.78, representing all payments collected by Smales from Summer Bivens, Angela Gunter-Forren, Kimberly Dillard, Mark and Patricia Morgan, John Ross, Ben Everette, and Larkin C.

Calhoun, Jr., including such additional amounts that Smales collected from other aggrieved consumers who may become known during the course of this litigation;

(e) finding that the State has met the criteria to pierce the corporate veil of Altrucon within the meaning of *Laya v Erin Homes, Inc.* 352 S.E. 2d 93, 94 (W. Va. 1986) and that Smales is personally liable for the unlawful acts of Altrucon in the provision of plumbing services as alleged in the State's complaint;

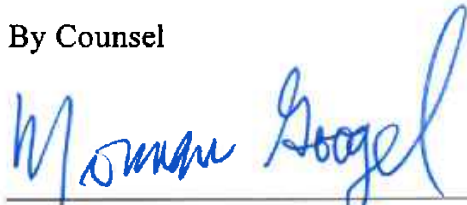
(f) awarding the State a judgment for all its costs, including reasonable attorney's fees, incurred in the investigation and litigation of this matter as authorized by W. Va. Code § 46A-7-108; and,

(g) 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



Norman Googel (WV State Bar # 1438)
Senior Assistant Attorney General
Tanya L. Godfrey (WV State Bar # 7448)
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
Email: Tanya.L.Godfrey@wvago.gov

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West Virginia Secretary of State — Online Data Services

Business and Licensing

Online Data Services Help

Business Organization Detail

NOTICE: The West Virginia Secretary of State's Office makes every reasonable effort to ensure the accuracy of information. However, we make no representation or warranty as to the correctness or completeness of the information. If information is missing from this page, it is not in the The West Virginia Secretary of State's database.

ALTRUCON INC.

Organization Information								
Org Type	Effective Date	Established Date	Filing Date	Charter	Class	Sec Type	Termination Date	Termination Reason
C Corporation	8/31/2017		8/31/2017	Domestic	Profit			

Organization Information			
Business Purpose	5418 - Professional, Scientific and Technical Services - Professional, Scientific and Technical Services - Advertising, Public Relations and Related Services (media, outdoor, direct mail, material distribution)		Capital Stock 1500.0000
Charter County	Raleigh	Control Number	
Charter State	WV	Excess Acres	
At Will Term	Member Managed		
At Will Term Years	Par Value		500.000000
Authorized Shares	3	Young Entrepreneur	No



Addresses

Type	Address
Local Office Address	245 ANTONIO AVENUE BECKLEY, WV, 25801
Mailing Address	245 ANTONIO AVE BECKLEY, WV, 25801 USA
Notice of Process Address	JERRY L. SMALES 245 ANTONIO AVENUE BECKLEY, WV, 25801
Principal Office Address	245 ANTONIO AVENUE BECKLEY, WV, 25801 USA
Type	Address

Officers

Type	Name/Address
Incorporator	KALA HELMICK 147 BECKWOODS DRIVE BECKLEY, WV, 25801
Incorporator	JERRY SMALES 147 BECKWOODS DRIVE BECKLEY, WV, 25801
President	JERRY L. SMALES 1038 N. EISENHOWER DR. #121 BECKLEY, WV, 25801
Vice-President	KALA B. BROOKE 245 ANTONIO AVE BECKLEY, WV, 25801
Type	Name/Address

DBA

DBA Name	Description	Effective Date	Termination Date
ALTRUCON	TRADENAME	8/31/2017	
BECKLEY ELECTRICIAN	TRADENAME	6/13/2018	
BECKLEY PLUMBERS	TRADENAME	6/13/2018	
BECKLEY SERVICES	TRADENAME	1/29/2018	
MOUNTAINEER PLUMBERS	TRADENAME	9/19/2018	
PRO ELECTRICIAN	TRADENAME	9/19/2018	
STRATEGIC ENTERPRISES	TRADENAME	1/29/2018	

DBA Name	Description	Effective Date	Termination Date
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Annual Reports
Filed For
2022
2021
2020
2019
2018
Date filed

For more information, please contact the Secretary of State's Office at 304-558-8000.

Wednesday, May 4, 2022 — 9:00 AM

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WEST VIRGINIA DIVISION OF LABOR

1900 Kanawha Boulevard East - State Capitol Complex - Building 3, Room 200 - Charleston,
WV 25305



AFFIDAVIT

1. My name is Kathy Rucker and I am employed as the Licensing Section Manager with the West Virginia Division of Labor.
2. As part of my duties, I am familiar with the required qualifications and the process an applicant must undergo in order to obtain certain licenses in various fields, classifications, and specialties in West Virginia.
3. I am also the custodian of records for the Division of Labor and the Contractor Licensing Board (the "Board") that identify the individuals or businesses who have contractor licenses, the classifications for which they are licensed, and the dates the licenses were issued, expired, suspended, or revoked by the Board. These records also identify the persons or business entities that have been issued cease and desist orders for engaging in certain types of work without a valid license.
4. The Contractor Licensing Act (the "Act"), W. Va. Code §30-42-1 *et seq.*, provides that an individual, other than as an employee of another, or business entity must have a contractor's license to engage or offer to engage in contracting work if the total cost of the entire project, including all labor, materials, and supplies, is \$5,000 or more for residential work or \$25,000 or more for commercial work. Prior to June 15, 2021, the Act provided that a person or business must have had a contractor's license to engage or offer to engage in contracting work if the total cost of the entire project, including all labor, materials, and supplies, was \$2,500 or more.
5. A search of the Licensing Section's records discloses that neither Jerry Smales, Patrick R. White, nor Mountaineer Plumbers have ever applied for or been issued a contractor license by the Board, either as individuals or as a business entity.
6. W. Va. Code §21-14-1 *et seq.* provides that a person must also have an individual license to perform or offer to perform plumbing work in West Virginia regardless of the cost of the project or job.
7. W. Va. Code St. R. §42-32-1 *et seq.* provides that only licensed master plumbers can direct, supervise, and control the plumbing work of licensed journeyman plumbers and plumbers-in-training on a plumbing project.

EXHIBIT
2

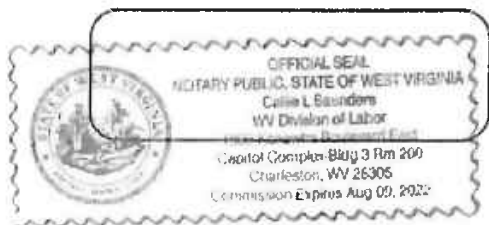
8. A search of the Licensing Section's records discloses that neither Jerry Smales nor Patrick R. White have ever applied for or been issued a master plumber's license, journeyman plumber's license, or a plumber-in-training license by the Division of Labor.

KATHY RUCKER
Printed Name of Affiant

[Handwritten Signature]
Signature of Affiant

Taken, subscribed, and sworn before me on this 14th day of July, 2022, in Charleston, Kanawha County, West Virginia.

My Commission expires on 8/9/22



Callie L. Saunders
Notary Public Signature

NOTICE OF PENDING LEGAL ACTION

AUGUST 29, 2019

ALTRUCON INC.
DBA BECKLEY PLUMBERS
CO/JERRY L. SMALES
1038 N. EISENHOWER #121
BECKLEY, WV 25801

Petitioners

v.

ANGELA M. GUNTER-FORREN AND HEATH A FORREN
104 CRESTWAY DR.
BECKLEY, WV 25801

Respondents

Dear Angela and Heath Forren:

COMES NOW, August 19, 2019 Altrucon Inc., DBA Beckley Plumbers (Petitioners) installed a hot water tank for Angela and Heath Forren (Respondents) at 104 Crestway Drive, Beckley, WV 25801.

Respondents called Petitioners back a day later informing Petitioners the water in the new tank was not hot enough. Petitioners responded with, "We feel your disappointment, and we will work hard for you to make this right".

Petitioners informed Respondents that this is a warranty issue, and stated, "when a brand new water tank is defective, the manufacturer is liable".

Respondents wanted Petitioners to return the tank at no added charges, yet Petitioners informed Respondents, "if we returned the tank, we would have to charge you for the additional work" and Petitioners recommended Respondents call the manufacturer to save the Respondents money.

EXHIBIT
3

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

Petitioners informed the Respondents: "On the shelf at the store, on the box, on the tank itself, and in the owner's manual, it all states you should not return the tank to the store, but you are to call the manufacturer and the manufacturer will repair the tank".

Petitioners informed the Respondents: The reason being self evident: "you have a warranty on the tank, and the warranty covers manufacturers defects".

The manufacturers are well versed on how to help the customer to take advantage of the warranty, and this is why the manufacturers and Lowe's have signs instructing customers not to return the tank to the stores. In the warranty, only authorized plumbers are allowed to work inside the tanks when there's a warranty issue.

1. If the plumber performs unauthorized work on the tank, it voids the manufacturers warranty.
2. If the plumber returns tank, the plumber needlessly has to charge extra money for the time and materials used to return the tank.
3. Returning a hot water tank is expensive for some people and is not part of the price of installing the water tank.
4. For the warranty to be effective, you must follow the manufactures instructions or the warranty will be void.

Petitioners explained the above information to the Respondents according to the manufacturer's warranty, Lowe's Policy, and Altrucon's Policy, "you must contact the manufacturer and have them repair the tank".

Notwithstanding the warranty issue, Petitioners heard the warranty company giving the Respondents a difficult time, so to help and overdeliver value to the customer, the CEO of Altrucon contacted Lowe's management and made special arrangements to return the Respondents' defective water tank against Lowe's, tank's manufacturer's, and Altrucon's own policy.

At no cost to Respondents, Petitioners offered to uninstall the new water tank, transport the new water tank back to Lowe's, refund the new water tank for another new water tank, transport the replaced new water tank to its new home, and install the new water tank, ALL FREE OF CHARGE.

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

Respondents denied the Petitioners' request for free service.

On August 23, 2019, Respondents returned an eight hundred dollar (\$800.00) check, leaving a bill for the Petitioners in the amount of nine hundred dollars (\$900.00), counting the return check charges.

Petitioners spent over \$800.00 for labor, services, equipment, and materials furnished to install Petitioners water tank, so now the Petitioners regretfully presents Respondents with a Mechanic's Lien.

This Mechanic's Lien is for labor, services, equipment, and materials furnished for a work of improvement upon that real property located at 104 Crestway Dr. Beckley, West Virginia 25801.

By the power vested in WVC §38-2-13: Respondents are hereby ordered to pay Beckley Plumbers \$900.00.

Respondents are given three (3) business days from the time Respondents gets this letter to settle this Mechanic's Lien, or Respondents will be liable for additional charges brought on by this legal action.

Respondents' total bill with Petitioner is \$800.00 plus \$100 return check fee, as stated.

If Respondents do not make this full payment within three business days, this bill WILL increase into thousands of dollars (referring to legal fees alone).

If Petitioners do not hear back from Respondents, Petitioners are processing this Mechanic's Lien against Respondents property on Wednesday, September 11, 2019.

Please note: All future payments must be made in cash.

By law Petitioners has to give Respondents this written notice, so Petitioners will not be contacting Respondents anymore. Respondents should call Petitioner immediately if Respondents want to insure Petitioner does not turn this Mechanic's Lien into the court house to be processed on the above date.

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

After Petitioners processes this Mechanic's Lien at the Raleigh County court house, Petitioners will then turn Respondents account over to collection agencies within two (2) business days unless Respondents make the payment in full.

Enforced collection on this obligation will result in additional charges, legal fees, and court costs. This action is chargeable to Respondents and will impair Respondents' credit rating.

As well, the notice of Petitioners actions will be provided to all applicable credit reviewing and granting authorities.

Thank you for your time and consideration in this important matter.

Regards,

Jerry Smales
Altrucon Inc.
DBA
Beckley Plumbers
1038 N. Eisenhower #121
Beckley, WV 25801
304-923-2013

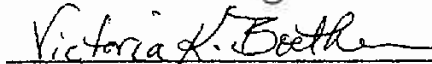
IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

VERIFICATION

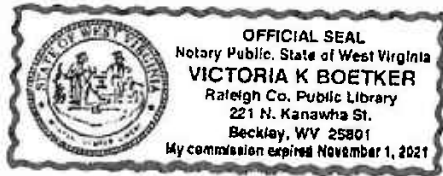
I, Jerry Lee Smales, after making an oath or affirmation to tell the truth, say that the facts I have stated in this NOTICE OF PENDING LEGAL ACTION, and Certificate of Service dated on this same date are true of my personal knowledge; and if I have set forth matters upon information given to me by others, I believe that information to be true.


August 29th, 2019
Jerry Lee Smales

This Verification was sworn to or affirmed before me on the 29th day of Aug., 2019.

 Notary Public / Other official

My commission expires: Nov. 1, 2021.



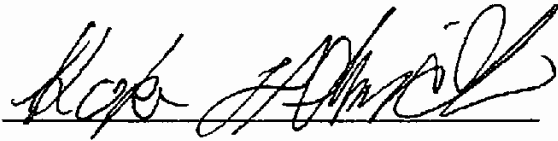
CERTIFICATE OF SERVICE

STATE OF WEST VIRGINIA COUNTY OF RALEIGH

I, Kala Brook Helmick, mailed Notice of Pending Legal Action by first class mail, to:

Angela M Gunter-Forren and Heath A. Forren, 104 Crestway Dr. Beckley, West Virginia 25801.

On the 29th day of August, 2019.



Signature

SCA-FC-314: Certificate of Service

Review Date: 05/2014; Revision Date: 05/2014;

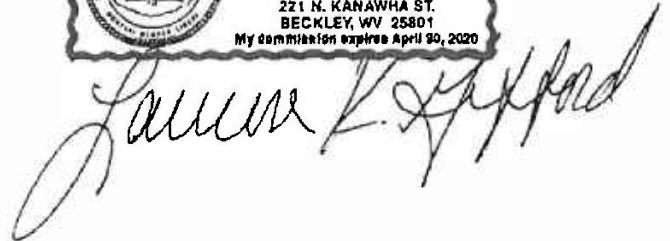
WVSCA Approved: 06/17/2014

State of West Virginia
County of Raleigh

The foregoing instrument was acknowledged before me on the 29 day of August, 2019.

By Kala B. Helmick

My commission expires April 30, 2020



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

NOTICE OF PENDING LEGAL ACTION

BECKLEY PLUMBERS
CO/JERRY L. SMALES
1038 N. EISENHOWER #121
BECKLEY, WV 25801

Plaintiffs,

v.

Ben Everette
204 Skyview Dr.
Beckley WV 25801

Defendant

WARNING CEASE AND DESIST DEMAND

January 6, 2020

Dear David Shannon

Feel free to forward this information to your lawyer

On or around Tuesday, December 17, 2019, defendant, Ben Everette, posted an online comment against Beckley Plumbers that said, "I shouldn't of paid them. They charged us over 600 dollars and didn't fix anything. And then wanted to charge us 200 dollars more to come back out."

In doing it, defendant committed wrongful (tortious) interference and disparagement against plaintiff's business, Beckley Plumbers. This letter shows you how to avoid this suit that is about to commence.

Defendant's comment is a suable action under both state and federal law and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26 to recover treble damages (**Treble damages**, in United States law, is a term that indicates that a statute permits a court to triple the amount of the actual/compensatory **damages** to be awarded to a prevailing plaintiff **Treble damages** are a multiple of, and not an addition to, actual **damages** in

EXHIBIT

4

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

some instances), costs of suit (court costs), sheriff summons, reasonable attorneys' fees, and etc.

1 Under W. Va. Code, 30-3C-2(a) [1980], individuals providing information to any review person or organization **may not** be shielded from civil liability when they provide information that is: (1) unrelated to the performance of the duties and functions of such review; and (2) false, and the person providing such information knew, or had reason to believe, that such information was false. Thus, individuals conducting a review must act in good faith in order to be statutorily immunized from civil liability under W. Va. Code, 30-3C-2 [1980]

2 "'The trial court, in appraising the sufficiency of a complaint on a Rule 12(b)(6) motion, will not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' Syl., Flowers v. City of Morgantown, [166] W. Va. [92], 272 S E 2d 663 (1980) " Syl. pt. 2, Sticklen v. Kittle, 168 W. Va. 147, 287 S E 2d 148 (1981).

3 "To establish prima facie proof of tortious interference, a plaintiff must show. (1) existence of a contractual or business relationship or expectancy; (2) an intentional act of interference by a party outside that relationship or expectancy; (3) proof that the interference caused the harm sustained; and (4) damages.

4. "Disparagement: Disparagement occurs where a party makes false statements regarding the quality of goods, or services, causing loss of business to the plaintiff. Many different types of claims involve disparagement, such as slander of title, and trade libel. False or fake negative reviews of a product may also constitute disparagement " WV Code §57-2-4. Justification and mitigation of damages in action for defamation.

5 "The essential elements for a successful defamation action by a private individual are (1) defamatory statements; (2) a non privileged communication to a third party; (3) falsity; (4) reference to the plaintiff; (5) at least negligence on the part of the publisher; and (6) resulting injury." Syl pt. 1, Crump v. Beckley Newspapers, Inc., 173 W. Va 699, 320 S.E.2d 70 (1983).

6. An individual's right to conduct a business or pursue an occupation is a property right. The type of injury alleged in an action for tortious interference with business relationship is damage to one's business or occupation. Therefore, the two-year statute of limitations governing actions for damage to property, set forth under W. Va. Code, 55-2-12 [1959], applies to an action for tortious interference with business relationship

Plaintiff has a history and proof of raising income up until the time of the defendant's review. Since the defendant's online comments, defendant's income has went down and has not enjoyed the same level of income

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

Plaintiffs are truly sorry defendant misunderstood their clog policy and procedures to mean clogs are guaranteed, but plaintiff's policy and procedures are clearly accessible at beckleyplumbers.com/policy-and-procedures and do clearly indicate clogs are not guaranteed.

Defendant intentionally, willfully, and wrongfully communicated to potential customers who needed a plumber's help and was considering to hire Beckley Plumbers that Beckley Plumbers would take their money and give them nothing back in return.

In doing it, defendant interfered with the legitimate business interests of Beckley Plumbers, owners, employees, and customers. Interference with people's right to obtain help and earn a living is wrong.

Since defendant's postings, on Google, and possible et. al., Beckley Plumbers business opportunities went down from 36 business opportunities a week consistently during the past year to 16 business opportunities the following week after defendant's tortious interferences.

Plaintiff's revenue dropped during the same one week period from \$8,300 a week before tortious interference to \$2,600 the following week after defendant's online communications Defendant is responsible for the difference in this income, and since defendant is responsible for the difference, defendant is liable and can be sued.

Remedies for business torts involves monetary damage awards for the plaintiff. A defendant will have to reimburse the plaintiff for losses that their tortious conduct caused Gault v. Monongahela Power Co , 159 W. Va 318, 223 S.E.2d 421, 427 (1976). Lost earnings comes in two forms past and future. Id

Evidence of a plaintiff's past earnings is pertinent and admissible when the jury is determining lost future earning capacity. Id. If defendant does not have money to repay the plaintiff, defendant must forfeit property, tracks of land.

In additional remedies, the court issues an injunction ordering the defendant to cease tortious conduct, the court orders defendant to remove all disparaging statements about the plaintiff's service, and orders the defendant to post a public apology online and in local news papers.

Defendant is hereby ordered to delete all online communications about Beckley Plumbers immediately.

If defendant's communications are not deleted by the end of the day of receiving this notice, a hearing on the above style case will be scheduled at the circuit court as soon as possible This case will be pursued vigorously for past and future damages, costs, and charges

IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

On the court date, defendant will have to explain and prove to Mr. Smales why defendant is not libel and should not be sued because of tortious actions.

Be advised: Defendant can forgo the following court date (Ben Everette, will not have to go to court) if defendant deletes the communications about Beckley Plumbers immediately.

Failure of not deleting said communications will immediately set in motion a hearing date, additional charges to the defendant, and another sheriff's summons. If defendant does not answer this document's requests and does not show up for said hearing, the defendant is waving all defenses and admitting guilt. The court will by-law award the plaintiff a favorable motion, and the final court order will be enforced on the next available date

I truly thank you for you time and consideration in these matters.

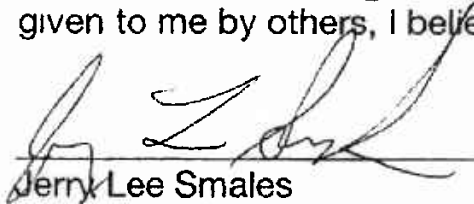
Regards,

Jerry Smales
Beckley Plumbers
1038 N Eisenhower #121
Beckley, WV 25801
304-923-2013

IN THE MAGISTRATE COURT OF RALEIGH COUNTY WEST VIRGINIA

VERIFICATION

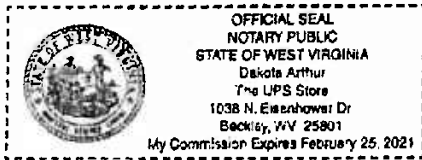
I, Jerry Lee Smales, after making an oath or affirmation to tell the truth, say that the facts I have stated in this NOTICE OF PENDING LEGAL ACTION, and Certificate of Service dated on this same date are true of my personal knowledge; and if I have set forth matters upon information given to me by others, I believe that information to be true.

 January 6th, 2020
Jerry Lee Smales

This Verification was sworn to or affirmed before me on the 6th day of January, 2020.

 Notary Public / Other official

My commission expires: Feb 25, 2021.



IN THE CIRCUIT COURT OF RALEIGH COUNTY WEST VIRGINIA

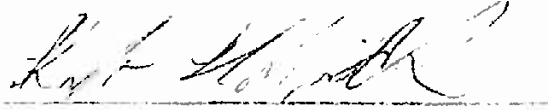
CERTIFICATE OF SERVICE

STATE OF WEST VIRGINIA COUNTY OF RALEIGH

I, Kala Brook Helmick, mailed NOTICE OF PENDING LEGAL ACTION
by summons, Raleigh County Sheriff, to:

Ben Everette
204 Skyview Dr.
Beckley WV 25801

On the 6th day of January, 2020.



Signature

SCA-FC-314: Certificate of Service

Review Date: 05/2014; Revision Date: 05/2014;

WVSCA Approved: 06/17/2014

