VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RICHMOND

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COMMONWEALTH OF VIRGINIA, *EX REL.* **MARK R. HERRING, ATTORNEY GENERAL,**	)
Plaintiff,	)
v.	) **CIVIL ACTION NO.** CL16-5155-1
KELLY PATRICK JOHNSON, an individual, d/b/a Kelly Home Improvement,	)
Defendant.	)

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring (the "Plaintiff" or the "Commonwealth"), petitions this Court to declare that the activities in which the Defendant, Kelly Patrick Johnson, individually and doing business as Kelly Home Improvement, ("Johnson" or the "Defendant") has engaged constitute violations of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, and Virginia Code § 54.1-1115(B)(i), which prohibits contracting without a license. The Commonwealth prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

JURISDICTION AND VENUE

1. The Commonwealth brings this action pursuant to the authority set forth in § 59.1-203 of the VCPA, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VCPA. Section 54.1-1115(B)(i) provides that any violation of that subsection involving a consumer transaction is also a violation of the VCPA.

2. The Circuit Court for the City of Richmond has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262 (1), (3), and (4) because the Defendant resides and has his principal place of employment in the City of Richmond, because there exists a practical nexus to the City of Richmond including the location of fact witnesses, the Plaintiff's office, and other evidence to the action, because the Defendant regularly conducts substantial business activity in the City of Richmond, and because portions of the causes of action arose in the City of Richmond. Venue is preferred in this Court pursuant to Virginia Code § 8.01-261(15)(c) because some or all of the acts to be enjoined are, or were, being done in the City of Richmond.

4. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendant written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no violations of the VCPA had occurred, or in the alternative, to execute an appropriate Assurance of Voluntary Compliance that is acceptable to the Commonwealth. The Defendant agreed to execute an Assurance of Voluntary Compliance, which is acceptable to the Commonwealth.

PARTIES

5. The Plaintiff is the Commonwealth of Virginia, by, through, and at the relation of Mark R. Herring, Attorney General of Virginia.

6. The Defendant, Kelly Patrick Johnson, is an individual who conducts business as a sole proprietorship under the name of Kelly Home Improvement. On information and belief,

the Defendant currently resides at 1911 Miller Avenue, Apt. B, Richmond, Virginia 23222. Kelly Home Improvement is not incorporated or otherwise registered with the Virginia State Corporation Commission, and is not licensed as a business or registered as a fictitious trade name in the City of Richmond. Johnson is not licensed as a contractor by the Virginia Department of Professional and Occupational Regulation Board for Contractors.

FACTS

7. Johnson is an individual doing business as Kelly Home Improvement who provides contractor services to individuals in their homes. Johnson has provided contractor services with estimates for jobs greater than $1,000 throughout the greater Richmond area including in the City of Richmond.

8. On information and belief, Johnson has engaged in a pattern and practice of offering contractor services to consumers, obtaining money in advance of performing those services, and failing to follow through with the completion of those services as promised.

9. Consumers hired Johnson to do repairs and renovations, paid Johnson down payments, and did not receive the services that were promised and contracted for. Often, Johnson would make additional representations and promises regarding work to be done that was never completed.

10. In one instance, a consumer paid $10,500 for various repairs and contractor work on the consumer's house. After doing demolition work in various areas of the house, and beginning work on other areas, Johnson and the crew he hired never completed the work. Among many excuses and unfulfilled promises for the incomplete work, Johnson promised in writing via text message to return $2,000 to the consumer for restitution. No money was returned.

11. In another instance, Johnson promised a consumer that he would provide a written contract, and promised to complete specific tasks within agreed upon timeframes, but never provided a contract or completed the tasks after payment had been made by the consumer. On information and belief, Johnson instead spent money provided by the consumer on goods not intended for the consumer and for personal use under false pretenses, used receipts to deceive the consumer regarding purchases purportedly made for the consumer when the goods were not in fact purchased for the consumer, and returned items purchased without explanation and without returning funds to the consumer.

12. Johnson provided consumers a business card on which the words "licensed" and "insured" are indicated, and provided a "contractors invoice" to consumers.

13. Johnson is not, and at the relevant times was not, licensed by the Virginia Department of Professional and Occupational Regulation Board for Contractors, and on information and belief, Johnson was not insured at the relevant times he was providing services as a contractor.

14. On information and belief, Johnson engaged in a pattern and practice of making false statements and unfulfilled promises throughout his transactions with consumers.

CAUSES OF ACTION

15. The Plaintiff re-alleges and incorporates herein by reference all matters set forth in Paragraphs 1 through 14 above.

16. The Defendant is now, and was at all relevant times mentioned herein, a "supplier" of "goods" or "services" in connection with "consumer transaction[s]" as those terms are defined in § 59.1-198 of the VCPA.

17. By advertising, selling, and offering for sale services as a contractor to consumers

in their homes, the Defendant has and does engage in "consumer transaction[s]," as defined in § 59.1-198 of the VCPA.

18. By undertaking to bid upon, accepting, and offering to accept various contracts for the construction, removal, repair, and improvement in consumers' homes, the Defendant is a "contractor," as defined in Virginia Code § 54.1-1100, requiring a Virginia contractor's license under Virginia Code § 54.1-1103.

19. In undertaking work without a valid Virginia contractor's license, falsely indicating the words "insured" and "licensed" on business cards, failing to complete work as promised, promising a refund in writing and failing to adhere to that promise, spending the consumer's money on goods not intended for the consumer and for personal use under false pretenses, using receipts to deceive the consumer regarding purchases purportedly made for the consumer when the goods were not in fact purchased for the consumer, returning items purchased without explanation and without returning funds, and making various other false statements and unfulfilled promises, the Defendant has engaged in the following acts and practices, which are prohibited practices under the VCPA:

a. Misrepresenting the source, sponsorship, approval, or certification of goods or services, in violation of § 59.1-200(A)(2);

b. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);

c. Advertising goods or services with intent not to sell them as advertised, or with the intent not to sell at the price or upon the terms advertised, in violation of § 59.1-200(A)(8);

d. Misrepresenting by the use of any written or documentary material that

appears to be an invoice or bill for merchandise or services previously ordered, in violation of § 59.1-200(A)(11);

e. Using any deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14);

f. Failing to adhere to the terms and conditions of a written agreement entered into with a consumer to resolve a dispute that arises in connection with a consumer transaction, in violation of § 59.1-200(A)(17); and

g. Violating the provisions of Virginia Code § 54.1-1115(B)(i) by undertaking work without a valid Virginia contractor's license or certificate when a license or certificate is required, in violation of § 59.1-200(A)(46).

20. Individual consumers have suffered losses as a result of the Defendant's violations of § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the VCPA.

21. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court:

A. Preliminarily and permanently enjoin Johnson from violating Virginia Code § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-203;

B. Grant judgment against Johnson and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by Johnson in connection with his violations of § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the

VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-205;

C. Grant judgment against Johnson and award to the Commonwealth civil penalties of up to $2,500 per willful violation of § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), pursuant to Virginia Code § 59.1-206(A);

D. Grant judgment against Johnson and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to $1,000.00 per violation of § 59.1-200(A)(2), (5), (8), (11), (14), (17), and (46) of the VCPA and Virginia Code § 54.1-1115(B)(i), and its attorneys' fees, pursuant to Virginia Code § 59.1-206(C); and

E. Order such other and further relief as may be deemed proper and just.

COMMONWEALTH OF VIRGINIA,
EX REL. MARK R. HERRING,
ATTORNEY GENERAL

By: _____
Stephen John Sovinsky

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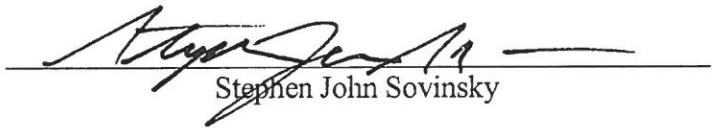
CERTIFICATE OF SERVICE

I, Stephen John Sovinsky, certify that on November 17, 2016, a true copy of the foregoing Complaint was mailed via first class mail to Kelly Patrick Johnson at 1911 Miller Avenue, Apt. B, Richmond, Virginia 23222.



Stephen John Sovinsky