VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF VIRGINIA BEACH

COMMONWEALTH OF VIRGINIA, EX REL. MARK R. HERRING, ATTORNEY GENERAL Plaintiff, v. SEA-THRU WINDOWS, INC., **SERVE: Clerk** **State Corporation Comm'n** **P.O. Box 1197** **Richmond, VA 23218-1197** & JEFFERY C. PESICH, **SERVE: Jeffery C. Pesich** **4428 Bonney Road** **Suite #407** **Virginia Beach, VA 23462** Defendants.	Case No._____

COMPLAINT

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of the Attorney General of Virginia, Mark R. Herring ("Plaintiff") petitions this Court to declare that the activities in which the Defendants, Sea-Thru Windows, Inc. ("Sea-Thru") and Jeffery C. Pesich (collectively "Defendants"), have engaged, and are engaging, constitute violations of the Virginia Consumer Protection Act ("VCPA"), Va. Code §§ 59.1-196 through 59.1-207; to enjoin these violations; to restore to consumers the sums acquired from them in violation of the VCPA; to award the Plaintiff civil penalties, expenses, and attorneys' fees; and to grant the other relief this Complaint requests.

PARTIES

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

2. Defendant Sea-Thru is a corporation organized under the laws of Virginia, with a principal business address of 1905 Hunts Neck Court, Virginia Beach, VA 23456.

3. On or about March 13, 2017, the registered agent for Sea-Thru resigned. On information and belief, Plaintiff alleges Sea-Thru has failed to appoint or maintain a registered agent in this Commonwealth.

4. Defendant Jeffery C. Pesich is the President, sole owner, and sole director of Sea-Thru. He is named here in his individual capacity because he directly violated the VCPA and he is responsible for Sea-Thru's VCPA violations for the reasons alleged below.

JURISDICTION AND VENUE

5. Plaintiff brings this action under Virginia Code § 59.1-203, which authorizes the Plaintiff to bring an action to enjoin any VCPA violations.

6. The Circuit Court for the City of Virginia Beach has authority to entertain this action and to grant the relief requested here under Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

7. Venue is preferred in this Court under Virginia Code § 8.01-261(15)(c) because some of the acts to be enjoined are, or were, being done in the City of Virginia Beach.

8. Venue is permissible in this Court under Virginia Code § 8.01-262(1) because Defendant Sea-Thru's principal office or place of business is located in the City of Virginia Beach. It is also permissible under Virginia Code § 8.01-262(3) and (4) because Defendants regularly conducted substantial business activity in the City of Virginia Beach, and because

portions of the causes of action arose in the City of Virginia Beach.

9. In accordance with Virginia Code § 59.1-203(B), before commencing this action, Plaintiff gave Defendants written notice that these proceedings were contemplated and provided a reasonable opportunity to appear before the Office of the Attorney General to demonstrate that no VCPA violations had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance. Neither Sea-Thru nor Mr. Pesich responded to the notice or appeared, so they have neither shown that no violations have occurred nor have they executed an appropriate Assurance of Voluntary Compliance.

FACTS

10. From 2004 to at least March 31, 2017, Sea-Thru engaged in the sale of windows and window installations for residential, commercial, and religious properties in central and eastern Virginia. It had offices in Norfolk, Virginia Beach, Chesapeake, and Midlothian.

11. From January 19, 2005 to March 7, 2017, Sea-Thru held a Class B contractor's license from the Virginia Board of Contractors.

12. On or about March 7, 2017, the Virginia Board for Contractors revoked Sea-Thru's contractor's license in part for intentional and unjustified failure to complete work contracted for and for failing to comply with the terms of its contracts with homeowners.

13. At all times relevant to this Complaint, Mr. Jeffery C. Pesich was Sea-Thru's President, sole owner, and sole director. He also served as the responsible manager, designated employee, and qualified individual for Sea-Thru's contractor's license.

14. Beginning around January 2015, Mr. Pesich's personal or business overspending drove Sea-Thru into debt. He began using loans, lines of credit, and business or consumer funds for personal purposes or for unauthorized business purposes.

15. Throughout 2016, even as its debts mounted, Sea-Thru continued advertising windows and window installation services and entering into window supply and installation contracts that its debts hindered it from performing.

16. From around June 2016 to November 2016, Sea-Thru entered into contracts without intending to sell the windows and window installation services as advertised, or without intending to sell them at the advertised prices or terms, or both.

17. During this time, multiple Virginia homeowners entered into home improvement contracts with Sea-Thru to install new windows in their homes for amounts ranging from $500 to $7,000.

18. Some or all of Sea-Thru's home improvement contracts were negotiated and entered into at homeowners' residences.

19. Sea-Thru's home improvement contracts with these homeowners typically provided an estimated start date and a completion date.

20. Sea-Thru's home improvement contracts with these homeowners typically included a broad lifetime warranty. In part, the warranty provided, "windows are guaranteed to be free from defects and are covered with a full lifetime glass breakage warranty for the life of your home. This warranty is transferable free of charge." It also provided that it covered all material and labor, free of charge, and that either a Sea-Thru technician or a manufacturer's technician will repair the claim. It excluded acts of god, such as hurricanes, hail, and fire; damage caused by homeowner's "abuse or neglect"; and damaged screens.

21. Sea-Thru's single-page home improvement contracts with these homeowners had, in small fine print of less than 10-point font, a brief mention of the buyer's right to cancel within three days, but failed to have the heading "BUYER'S RIGHT TO CANCEL" and failed to

include in the text or as a separate notice a notice of cancellation form for the homeowner to use.

22. Homeowners performed their obligations under these contracts by paying Sea-Thru downpayments of hundreds or thousands of dollars.

23. For multiple homeowners from January 2016 to April 2017, Sea-Thru either failed to deliver the promised and contracted for windows on time, or failed to deliver the promised and contracted for windows or window installations at all.

24. For multiple homeowners from January 2015 to April 2017, Sea-Thru failed to honor its lifetime warranty. During this time, homeowners who called or met with Sea-Thru employees were told that their windows would be replaced free of charge, but Sea-Thru failed to do so.

25. From June through December 2016, homeowners had increasing difficulty reaching Sea-Thru. Their messages were rarely returned.

26. During this time, if homeowners reached Sea-Thru, employees or managers would tell them they would check on homeowners' projects' status and call back. Sea-Thru rarely called homeowners back.

27. In some cases, Sea-Thru told homeowners that it would install their windows on a certain date or would repair installed windows by a certain date, but those dates would pass with no calls from Sea-Thru and no installations or repairs.

28. Since around December 2016, Sea-Thru stopped taking calls altogether and its offices have closed.

29. Ultimately, Defendants have absconded with consumer funds paid to them for windows and window installations and failed to make repairs they committed to making.

CAUSE OF ACTION

30. Plaintiff realleges and incorporates by reference paragraphs 1 through 29.

31. Virginia Code § 59.1-197 provides that the VCPA is to be applied as remedial legislation to promote fair and ethical standards of dealings between suppliers and the consuming public.

32. In relevant part, Virginia Code § 59.1-198 defines "consumer transaction" to mean "[t]he advertisement, sale, lease, license or offering for sale, lease or license, of goods or services to be used primarily for personal, family or household purposes."

33. In relevant part, Virginia Code § 59.1-198 defines "goods" to mean "all real, personal, or mixed property, tangible or intangible," defines "supplier" to mean a seller who advertises, solicits or engages in consumer transactions, and defines "services" to include "work performed in the business or occupation of the supplier."

34. In connection with consumer transactions, the VCPA prohibits suppliers from:

a. Advertising goods or services with intent not to sell them as advertised, or with intent not to sell at the price or upon the terms advertised under Virginia Code § 59.1-200(A)(8);

b. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction under Virginia Code § 59.1-200(A)(14); and

c. Violating any provision of the Virginia Home Solicitation Sales Act under Virginia Code § 59.1-200(A)(19).

35. The Virginia Home Solicitation Sales Act applies to home solicitation sales, which are defined under Virginia Code § 59.1-21.2 to be:

> 1. [a] consumer sale or lease of goods or services in which the seller or a person acting for him engages (i) in a personal solicitation of the sale or lease or (ii) in a solicitation of the sale or lease by telephonic or other electronic means at any residence other than that of the seller; and 2. The buyer's agreement or offer to purchase or lease is there given to the seller or a person acting for him.

36. The Virginia Home Solicitation Sales Act generally provides under Virginia Code § 59.1-21.3 that a buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase.

37. The Virginia Home Solicitation Sales Act also generally provides under Virginia Code § 59.1-21.4 that a seller must include in any written agreement a statement of the buyer's rights to cancel under a "conspicuous caption" that is "in bold face type of a minimum size of ten points" that reads "BUYER'S RIGHT TO CANCEL", and that the seller must include a "Notice of Cancellation" form for the buyer to make the cancellation.

38. Residential window sales and window installations are consumer transactions under the VCPA, since they are for "personal, family, or household purposes."

39. Sea-Thru is a supplier under the VCPA because it advertised, solicited, and engaged in transactions in Virginia to purchase and install windows.

40. Mr. Pesich directed and controlled Sea-Thru's business operations, controlled its bank accounts, controlled its corporate assets, and was its sole owner, director, and officer.

41. Mr. Pesich took funds from Sea-Thru that should have been used to purchase residential windows for consumers and used those funds for his own personal expenses or for other corporate debts.

42. Sea-Thru and Mr. Pesich violated the VCPA in the following ways:

a. They violated Virginia Code § 59.1-200(A)(8) by advertising windows and window installations to homeowners in 2016 when, at the time, Sea-Thru did not have the financial resources to purchase windows from suppliers and they did not intend to sell the

windows or window installations as advertised or at the advertised prices or terms.

b. They violated Virginia Code § 59.1-200(A)(14) by using deception, fraud, false pretenses, false promises, or misrepresentations to consumers about supplying and installing windows by (i) failing to start or to complete window installations by the time specified in the contracts; (ii) spending consumers' money on goods not intended for consumers and for personal use under false pretenses; and (iii) by making false statements and unfulfilled promises about when windows would be delivered and installed.

c. They violated Virginia Code § 59.1-200(A)(14) by using deception, fraud, false pretenses, false promises, or misrepresentations to consumers that Sea-Thru would repair windows covered by a lifetime warranty.

d. And they violated Virginia Code § 59.1-200(A)(19) by violating provisions of the Virginia Home Solicitation Sales Act. Specifically, they violated Virginia Code § 59.1-21.4 by failing to include in contracts that Sea-Thru solicited, negotiated, and consummated at consumers' residences a disclosure of the consumers' right to cancel in appropriate font size under the caption, "BUYER'S RIGHT TO CANCEL", and by failing to include in those contracts a notice of cancellation form.

43. Mr. Pesich as an individual has directly violated the VCPA as alleged in paragraph 42 and its subparagraphs.

44. Mr. Pesich is liable for Sea-Thru's VCPA violations because he actively and knowingly participated in the violations alleged in paragraphs 42 and its subparagraphs, including formulating, controlling, approving, and directing those violations.

45. Sea-Thru and Mr. Pesich have willfully engaged in these acts and practices in violation of the VCPA.

46. Individual consumers have suffered losses as a result of these VCPA violations.

PRAYER FOR RELIEF

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

A. Preliminarily and permanently enjoin Defendants and their officers, employees, agents, successors, and assigns from violating the VCPA under Virginia Code § 59.1-203;

B. Grant judgment against Defendants and award to the Plaintiff all sums necessary to restore to any consumers the money or property acquired from them by Defendants in connection with VCPA violations under Virginia Code § 59.1-205;

C. Enter any additional orders or decrees as may be necessary to restore to any consumers the money or property acquired from them by Defendants in connection with VCPA violations under Virginia Code § 59.1-205;

D. Grant judgment against Defendants and award to the Plaintiff civil penalties of up to $2,500.00 per violation for each willful violation of the VCPA under Virginia Code § 59.1-206(A), the exact number of violations to be proven at trial;

E. Grant judgment against Defendants and award to the Plaintiff its costs, reasonable expenses incurred in investigating and preparing the case up to $1,000.00 per violation of the VCPA, and attorneys' fees pursuant to Virginia Code § 59.1-206(C); and

F. Grant such other and further relief as the Court deems equitable and proper.

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

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