

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

FILED

2016 SEP 14 AM 9:54

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

STATE OF WEST VIRGINIA ex rel.  
PATRICK MORRISEY,  
Attorney General,

Plaintiff,

v.

Civil Action No. K0C-1407

BEACON ASSET RECOVERY AGENCY, LLC,  
a Georgia limited liability company not authorized  
to do business in the State of West Virginia;  
and NATHAN PENDERGRASS, individually  
and in his capacity as sole owner and manager of  
Beacon Asset Recovery Agency, LLC,

Defendants.

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

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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, Beacon Asset Recovery Agency, LLC and Nathan Pendergrass, individually and as sole manager of Beacon Asset Recovery Agency, LLC (collectively "Beacon" 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 all other appropriate relief as authorized by W. Va. Code § 46A-7-108.

## **I. INTRODUCTION**

1. The Attorney General opened an investigation of Beacon in April, 2016 after finding probable cause to believe that Beacon was engaging in unfair or deceptive acts or practices by soliciting West Virginia consumers to hire Beacon to recover unclaimed property in the possession of the State for a fee. Specifically, Beacon engaged in this business in West Virginia without a business registration certificate from the State Tax Department, without a certificate of authority from the Secretary of State, and without a license and bond to operate a private investigation business. Beacon also misled consumers in its letters of solicitation by failing to disclose that consumers may recover unclaimed property in the possession of the State on their own without a fee.

## **II. PARTIES**

### ***The Plaintiff***

2. 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 of consumer goods and services.

### ***The Defendants***

3. Defendant Beacon Asset Recovery Agency, LLC is a limited liability company that was established by Nathan Pendergrass with the Georgia Secretary of State on September 2, 2012.

4. Beacon Asset Recovery Agency, LLC maintains its principal business office at 175 Carnegie Place, Suite 115, Fayetteville, Georgia 30214.

5. Defendant Nathan Pendergrass is the sole owner and member of Beacon Asset Recovery Agency, LLC and is believed to reside at 250 Amal Drive SW, Apt. 10001, Atlanta, Georgia 30315.

### **III. 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).

### **IV. BACKGROUND AND APPLICABLE LAW**

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

9. The WVCCPA defines the terms “trade” or “commerce” as meaning “the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of the State,” W. Va. Code §46A-6-102(e) (emphasis added).

10. The WVCCPA provides that “[U]nfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful,” W. Va. Code § 46A-6-104.

11. The WVCCPA specifies that the term "unfair methods of competition and unfair or deceptive acts or practices" means and includes, but is not limited to, certain conduct including the following:

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).

12. The WVCCPA defines the term “consumer” as meaning “a natural person to whom a sale or lease is made, and a ‘consumer transaction’ means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose,” W. Va. Code § 46A-6-102(b) (emphasis added).

13. As a business that engages in the sale of services to West Virginia residents for a personal, family, or household purpose, Beacon is engaged in “consumer transactions” as defined by the WVCCPA and is subject to the regulatory authority of the Attorney General pursuant to W. Va. Code § 46A-1-101 *et seq.*,

14. The term “business activity” means and includes all purposeful revenue-generating activity engaged in with the object of gain or economic benefit, including the sale of tangible personal property, W. Va. Code § 11-12-2(2).

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

16. A foreign corporation may not transact business in West Virginia unless it first obtains a certificate of authority from the West Virginia Secretary of State, W. Va. Code § 31D-15-1502(a).

17. A foreign corporation is deemed to be “transacting business” in this State if, among other things, it “makes a contract to be performed, in whole or in part, by any party thereto in this state,” W. Va. Code § 31D-1501(d)(1).

18. A person or company that engages in private investigative and security services in West Virginia must be licensed and bonded through the West Virginia Secretary of State as a “private detective” or “private investigator,” W. Va. Code § 30-18-1(5)(a).

19. The activities that constitute engaging in a “private investigation business” for licensing purposes include “the location or recovery of lost or stolen property,” W. Va. Code § 30-18-1(1)(D).

20. A company that engages in the location and return of unclaimed property for a fee is engaging in a “private investigation business” and must be licensed, bonded, and otherwise meet the requirements of the statute governing private investigators in West Virginia, W. Va. Code § 30-18-1 *et seq.*

21. Violations of any state or federal law or regulation intended to protect the public and foster fair and honest competition is an unfair or deceptive act or practice as defined by the WVCCPA, W. Va. Code § 46A-6-104.

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

## **V. RELEVANT PERIOD OF TIME**

23. The relevant period of time for this civil action is the time when Beacon commenced the sale of services in West Virginia, up to and including the present.

## **VI. STATEMENT OF FACTS**

24. The Attorney General was prompted to open an investigation of Beacon in April 2016 after receiving complaints from two consumers disclosing that Beacon solicited them to recover property owned by them that it had located for a fee.

25. Betty Butler of Nimitz, West Virginia received a letter from Beacon dated December 29, 2015, offering to assist her in recovering unclaimed property in the amount of \$901.00 for a fee of 33 percent (33%) of the amount recovered. Beacon's letter to Ms. Butler and related documents Beacon provided to her are attached hereto as exhibits A1, A2 and A3 and incorporated by reference herein.

26. Betty Searls of Follansbee, West Virginia received a letter from Beacon dated January 25, 2016, offering to assist her in recovering unclaimed property in the amount of \$525.84 for a fee of 33 percent (33%) of the amount recovered. Beacon's letter to Ms. Searls and related documents Beacon provided to her are attached hereto as exhibits B1, B2 and B3 and incorporated by reference herein.

27. Further review of the complaints of Butler and Searls disclosed that the property Beacon sought to recover for them was actually "unclaimed property" in the possession of the West Virginia State Treasurer's Office.

28. Consumers may directly recover unclaimed property from the West Virginia State Treasurers Office for free and without the need for assistance of a third party.

See <http://www.wvtreasury.com/unclaimed-property/about-unclaimed-property> (“Unclaimed property searches and claims are FREE through the West Virginia State Treasurer’s Office.”).

29. Beacon’s letters soliciting West Virginia consumers to purchase its services do not disclose that the property in question is “unclaimed property” in the possession of the West Virginia State Treasurer’s Office nor do the letters disclose that consumers may recover the property directly without a fee or the need for services of a third party.

30. In response to the Attorney General’s inquiry, Beacon disclosed that it acquired information about unclaimed property in the possession of the West Virginia State Treasurer’s Office and sent letters soliciting West Virginia residents to purchase its services, but Beacon did not disclose the number of letters or the identity of persons to whom the letters were sent.

31. Efforts by the Attorney General’s office to secure Beacon’s voluntary compliance with applicable laws have been unsuccessful, which necessitated the filing of this Complaint.

## **VII. THE ATTORNEY GENERAL’S ENFORCEMENT POWERS**

32. West Virginia Code § 46A-7-101 *et seq.* authorizes the Attorney General to enforce the WVCCPA. In order to meet this obligation, the Legislature authorized the Attorney General to conduct formal investigations, W. Va. Code § 46A-7-104, and to bring a civil action for an injunction and “other appropriate relief,” W. Va. Code § 46A-7-108. The term “other appropriate relief” means the Legislature intended that the “full array of equitable relief” be available in suits brought by the Attorney General to enforce the WVCCPA. *State ex rel.*

*McGraw v. Imperial Marketing*, 203 W.Va. 203, 506 S.E.2d 799 (1998). Thus, such relief may include consumer refunds, disgorgement, and debt cancellation. *Id.*

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

34. The WVCCPA 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,” W. Va. Code § 46A-7-111(2) (emphasis added). The term “willful” means “conduct that was intentionally engaged in [as opposed to involuntarily] that had as its consequences the violation of law.” *State v. Saunders*, 638 S.E.2d 173, 174 (W. Va. 2006).

35. The Court held that the “Office of Attorney General retains inherent common law powers, when not expressly restricted or limited by statute.” *State of West Virginia ex rel. Discover Financial Services, Inc. v. Nibert*, 744 S.E. 2d 625, 645 (W.Va. 2013). This holding provides that the Attorney General may seek relief for common law fraud in enforcement proceedings under the WVCCPA.

**VIII. CLAIMS FOR RELIEF**  
**FIRST CAUSE OF ACTION**  
**(Engaging In Business In West Virginia Without A License)**

36. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

37. Beacon engaged in the sale of its services to West Virginia consumers at all times pertinent hereto without first obtaining a business registration certificate from the State Tax Department as required by W. Va. Code § 11-12-3(a).

38. Engaging in business without a license is an unfair deceptive act or practice, W. Va. Code § 46A-6-104.

39. Beacon engaged in an unfair deceptive act or practice in each instance in which it sold or attempted to sell its services to West Virginia consumers without a business registration certificate.

**SECOND CAUSE OF ACTION**  
**(Transacting Business Without A Certificate Of Authority)**

40. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

41. Beacon, a foreign corporation, transacted business in West Virginia at all times pertinent hereto without a certificate of authority from the West Virginia Secretary of State as required by W. Va. Code § 31D-15-1501(a).

42. Transacting business in West Virginia without a certificate of authority is an unfair or deceptive act or practice, W. Va. Code § 46A-6-104.

43. Beacon engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance in which it sold or attempted to sell its services to West Virginia consumers without a certificate of authority.

**THIRD CAUSE OF ACTION**  
**(Engaging In A Private Investigation Business Without A License)**

44. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

45. Beacon engaged in the business of locating and recovering lost or stolen property, specifically unclaimed property in the possession of the West Virginia Treasurer's Office, for a fee at all times pertinent hereto.

46. The business of locating or recovering lost or stolen property constitutes a "private investigation business" as defined by W. Va. Code § 30-18-1(1)(D) and requires licensing and bonding as a "private detective" or "private investigator," W. Va. Code § 30-18-1 *et seq.*

47. Beacon engaged in an unfair deceptive act or practices in violation W. Va. Code § 46A-6-104 in each instance when it sold or attempted to sell its services to West Virginia consumers without a license and bond as a "private detective" or "private investigator" as required by W. Va. Code § 30-18-1 *et seq.*

**FOURTH CAUSE OF ACTION  
(Omission of Material Facts)**

48. The State reasserts each and every allegation hereinabove in this Complaint as if set forth fully herein.

49. Beacon solicited West Virginia consumers to retain its services by sending letters vaguely describing the nature and location of the lost property and offering to recover the property for a fee of 33 percent (33%) of the amount recovered.

50. Beacon's letters failed to disclose that the property in question is actually unclaimed property in the possession of the West Virginia State Treasurer's Office.

51. Beacon's letter also conceals and omits the material fact that consumers may directly recover unclaimed property from the West Virginia State Treasurer's Office on their own without a fee and without the need for the assistance of a third party.

52. Beacon engaged in an unfair or deceptive act or practice in violation of W. Va. Code § 46A-6-104 in each instance when it sought to solicit consumers to retain its services with letters that failed to specifically disclose that the property in question was actually unclaimed property in the possession of the West Virginia State Treasurer's Office and that also failed to disclose that consumers could directly recover the property on their without a fee and without the need for assistance of a third party.

### **IX. PRAYER**

WHEREFORE, the State respectfully prays that it be granted relief against Beacon as follows:

(a) That the court enter a final order finding that Beacon has violated the WVCCPA as alleged herein and permanently enjoining the Beacon from continuing to violate the WVCCPA.

(b) That the court enter a final order 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 requiring Beacon to pay a civil penalty of up to \$5,000.00 to the State for each such violation as authorized by W. Va. Code § 46A-7-111(2);

(c) That the court enter a final order disgorging all amounts wrongfully obtained as a result of the unlawful actions alleged herein and requiring refunds as appropriate to consumers aggrieved by Beacon's practices.

(d) That the court enter a final order as authorized by W. Va. Code § 46A-7-108 requiring that the Defendants reimburse the State for all its attorney's fees and costs expended in connection with the investigation and litigation of this matter; and

(e) That the court enter a final order awarding the State such other and further equitable relief as is proper and just arising from 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  
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](mailto:Norman.A.Googel@wvago.gov)

FROM THE OFFICES OF:  
BEACON ASSET RECOVERY AGENCY LLC  
P.O. Box 1779  
Fayetteville, GA 30214  
www.beaconassetrecovery.com

December 29, 2015

Betty S Butler  
HC 76 Box 75  
Nimitz, WV 25978

Dear Betty S Butler:

A recent update of our records indicates that there is an undistributed, undelivered, or stale-dated check in the amount of \$901.00 that is due and payable to Betty S Butler which is currently being held in trust by a federal provincial, state or other government entity, or agency or subdivision thereof.

To receive this money, please complete, sign and return the attached forms to the address below. Failure to return the attached documents in a timely manner may result in the funds being declared *abandoned* by the holder and would only create unnecessary delay in processing a request to secure and return \$901.00 that rightfully belongs to Betty S Butler.

Send the completed forms by US mail to: **Beacon Asset Recovery Agency, LLC**  
**Post Office Box 1779**  
**Fayetteville, GA 30214**

There are no upfront costs or out of pocket expenses to utilize our services. Beacon Asset Recovery Agency LLC will pay all costs associated with the collection of the identified assets. We have earned a reputation as an industry leader because of our commitment to providing our clients with minimum risks and maximum rewards.

If you have any interest in these funds and would like us to immediately file a claim for re-issuance you must:

1. Complete the **'Letter of Authorization to Recover Funds'** and have notarized. This grants Beacon Asset Recovery Agency authority to act on your behalf in order to take any and all legal steps necessary to collect the funds owed to you.
2. Complete the **'Agreement and Fee Memorandum'**. It explains the services we provide and outlines the fee only upon successful recovery of funds.
3. Provide copy of a **Picture ID**. To verify you are the correct entity funds are owed.

If you have any questions regarding these assets or the reissuance process, please feel free to contact us toll free at (888) 654-4669. You can also visit us on the web at [www.beaconassetrecovery.com](http://www.beaconassetrecovery.com). We look forward to being of service to you.

Sincerely,

*Nathan Pendergrass*  
Nathan Pendergrass  
Beacon Asset Recovery





FROM THE OFFICES OF:  
BEACON ASSET RECOVERY AGENCY LLC  
P.O. Box 1779  
Fayetteville, GA 30214  
www.beaconassetrecovery.com

**AGREEMENT AND FEE MEMORANDUM**

In consideration of Beacon Asset Recovery Agency LLC, hereinafter referred to as BARA, assistance in the recovery of outstanding funds owed to Betty S Butler, hereinafter referred to as Client, in the amount of \$901.00, both Client and BARA agree to the terms outlined in the body of this contract.

1. Client shall execute a limited power of attorney to enable BARA to perform the necessary duties that enable BARA to recover any unclaimed assets that may belong to Client. Client understands that until such Limited Power of Attorney is delivered, BARA is unable to pursue the aforementioned unclaimed assets.

2. BARA will bear all costs associated with the collection of said funds. Client agrees that after this contract has been signed, neither Client nor any agents of the Client shall attempt to obtain the funds, and/or interfere with BARA efforts to collect said funds. If Client or any agent of the Client does so, Client shall pay BARA thirty-three percent (33%) of \$901.00 within thirty (30) days.

3. If the Client is in the process of recovering said funds, and can provide unbiased proof, satisfactory to BARA, this contract shall be null and void. If Client collects said funds and unbiased proof has not been provided to BARA, then Client shall pay BARA thirty-three percent (33%) of \$901.00 within thirty (30) days of receipt.

4. Client agrees that BARA has not and will not guarantee the recovery of any assets, but will work diligently to recover and deliver any and all funds payable to Client.

5. BARA is authorized to act as the agent for Client for the purposes of processing, collecting and disbursement of funds, which are due, and payable to Client. Client shall indemnify and hold harmless BARA of any portion of said funds received by Client.

6. Upon collection of said funds on behalf of Client, BARA shall receive thirty-three percent (33%) of \$901.00 and forward the remaining balance to Client.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State/Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

**EXHIBIT  
B1**

FROM THE OFFICES OF:  
BEACON ASSET RECOVERY AGENCY LLC  
P.O. Box 1779  
Fayetteville, GA 30214  
[www.beaconassetrecovery.com](http://www.beaconassetrecovery.com)

January 25, 2016

Betty Searls  
1048 Main St apt 204  
Follansbee, WV 26037

Dear Betty Searls:

A recent update of our records indicates that there is an undistributed, undelivered, or stale-dated check in the amount of **\$525.84** that is due and payable to Betty Searls which is currently being held in trust by a federal, provincial, state or other government entity, or agency or subdivision thereof.

To receive this money, please complete, sign and return the attached forms to the address below. Failure to return the attached documents in a timely manner may result in the funds being declared *abandoned* by the holder and would only create unnecessary delay in processing a request to secure and return \$525.84 that rightfully belongs to Betty Searls.

Send the completed forms by US mail to: **Beacon Asset Recovery Agency, LLC**  
**Post Office Box 1779**  
**Fayetteville, GA 30214**

There are no upfront costs or out of pocket expenses to utilize our services. Beacon Asset Recovery Agency LLC will pay all costs associated with the collection of the identified assets. We have earned a reputation as an industry leader because of our commitment to providing our clients with minimum risks and maximum rewards.

If you have any interest in these funds and would like us to immediately file a claim for re-issuance you must:

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3. Provide copy of a **Picture ID**. To verify you are the correct entity funds are owed.

If you have any questions regarding these assets or the reissuance process, please feel free to contact us toll free at (888) 654-4669. You can also visit us on the web at [www.beaconassetrecovery.com](http://www.beaconassetrecovery.com). We look forward to being of service to you.

Sincerely,

*Nathan Pendergrass*  
Nathan Pendergrass  
Beacon Asset Recovery

FROM THE OFFICES OF:  
BEACON ASSET RECOVERY AGENCY LLC  
P.O. Box 1779  
Fayetteville, GA 30214  
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1. Client shall execute a limited power of attorney to enable BARA to perform the necessary duties that enable BARA to recover any unclaimed assets that may belong to Client. Client understands that until such Limited Power of Attorney is delivered, BARA is unable to pursue the aforementioned unclaimed assets.
2. BARA will bear all costs associated with the collection of said funds. Client agrees that after this contract has been signed, neither Client nor any agents of the Client shall attempt to obtain the funds, and/or interfere with BARA efforts to collect said funds. If Client or any agent of the Client does so, Client shall pay BARA thirty-three percent (33%) of \$525.84 within thirty (30) days.
3. If the Client is in the process of recovering said funds, and can provide unbiased proof, satisfactory to BARA, this contract shall be null and void. If Client collects said funds and unbiased proof has not been provided to BARA, then Client shall pay BARA thirty-three percent (33%) of \$525.84 within thirty (30) days of receipt.
4. Client agrees that BARA has not and will not guarantee the recovery of any assets, but will work diligently to recover and deliver any and all funds payable to Client.
5. BARA is authorized to act as the agent for Client for the purposes of processing, collecting and disbursement of funds, which are due, and payable to Client. Client shall indemnify and hold harmless BARA of any portion of said funds received by Client.
6. Upon collection of said funds on behalf of Client, BARA shall receive thirty-three percent (33%) of \$525.84 and forward the remaining balance to Client.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_ Print: \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_

State/Zip: \_\_\_\_\_ Phone: \_\_\_\_\_

