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IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

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

PETITIONER,

v.

MISC. ACTION NO. 15-P-402

**ADVANCED SERVICES GROUP, LLC
and STEPHEN C. JOHNSTON,**

RESPONDENTS.

PETITION TO ENFORCE ASSURANCE OF DISCONTINUANCE

Comes now the Petitioner, State of West Virginia ex rel. Patrick Morrissey, Attorney General (“the State” or “Attorney General”) and files this Petition to Enforce Assurance of Discontinuance (“Petition”) asking this court to enter a judgment against the Respondents for the amount they promised to pay in the Assurance of Discontinuance (“Assurance”) entered into with the Attorney General on May 29, 2015. In support of this Petition, the Attorney General represents as follows:

1. The Attorney General opened an investigation of the Respondents, Stephen C. Johnston and his company, Advanced Service Group, LLC (collectively “Johnston”) in August, 2014 after receiving a complaint disclosing that Johnston was engaging in the sale of products to consumers at their homes without affording consumers notice of their unconditional right to cancel such sales within three business days as required by FTC Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (“FTC Rule”), 16 C.F.R. § 429.

2. The complaint also disclosed that Johnston failed to honor the implied warranty of merchantability when such products fail to operate properly, as required by W. Va. Code § 46A-6-107.

3. At the conclusion of the investigation, the Attorney General entered into a settlement agreement called an Assurance with Johnston on May 29, 2015, a copy of which is attached hereto as State's Exhibit A and incorporated by reference herein.

4. In addition to promising to comply with state and federal consumer protection law in the future, Johnston promised to make a payment of \$4,000 to the State. The payment consisted of \$3,500 that was to be refunded to the complainant, Thomas Hatfield of Hanover, West Virginia, in exchange for return of the product, and a payment of \$500 to the State of West Virginia that may be used by the Attorney General for those purposes designated in the Assurance.

5. When Johnston signed the Assurance on May 29, 2015, at the Office of the Attorney General in Charleston, he advised that he could not make the payment of \$4,000 on that day, but promised to make the payment within 60 days.

6. The Attorney General sent a letter dated June 3, 2015 to Johnston confirming and accepting his promise to make the payment within 60 days after the date of the Assurance. A copy of the June 3 letter is attached at Exhibit B and incorporated by reference herein.

7. Johnston did not make the payment of \$4,000 within 60 days after the date of the Assurance as promised, nor has he made the payment as of the date of the filing of this Petition.

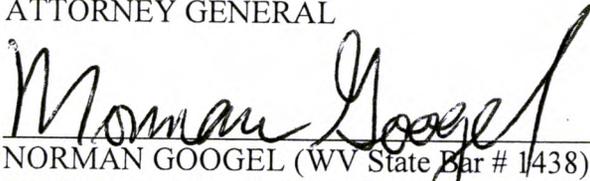
WHEREFORE, the State prays that it be granted a judgment against Johnston in the amount of \$4,000, including pre and post-judgment interest, and that the State be awarded such other relief against Johnston as is proper and just.

Respectfully submitted,

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

By Counsel

PATRICK MORRISEY,
ATTORNEY GENERAL

A handwritten signature in cursive script, reading "Norman Googel", written over a horizontal line.

NORMAN GOOGEL (WV State Bar # 1438)
SENIOR ASSISTANT ATTORNEY GENERAL
Consumer Protection/Antitrust Division
P.O. Box 1789
Charleston, WV 25326-1789
(304) 558-8986

BEFORE THE ATTORNEY GENERAL OF WEST VIRGINIA
STATE CAPITOL
CHARLESTON, WEST VIRGINIA

SUBPOENA

IN THE MATTER OF THE INVESTIGATION OF:

Steve A. Thaxton and)
Thaxton Wholesale Meats, LLC) SUBPOENA TO
206 Dandelion Dr.) PRODUCE CERTAIN
P. O. Box 405) RECORDS
Millwood, West Virginia 25262)

IN THE NAME OF THE STATE OF WEST VIRGINIA:

TO: Steve A. Thaxton and)
Thaxton Wholesale Meats, LLC)
206 Dandelion Dr.)
P. O. Box 405)
Millwood, West Virginia 25262)

YOU ARE HEREBY COMMANDED to produce the documentary material in your possession, custody, or control described below for examination and copying and to respond to the investigative interrogatories on or before the 15th day of June, 2015, to Norman Googel, Senior Assistant Attorney General, at the offices of the Attorney General's Consumer Protection Division, 812 Quarrier Street, 1st Floor, Charleston, West Virginia 25301-2617.

This Subpoena is issued pursuant to W. Va. Code § 46A-7-104(1), and concerns an investigation into alleged unfair or deceptive acts or practices and other possible violations of the West Virginia Consumer Credit and Protection Act ("WVCCPA"), W. Va. Code § 46A-1-101 *et seq.*

All information provided to the Office of the Attorney General pursuant to this Subpoena shall be retained in a confidential manner consistent with the provisions of W. Va. Code § 46A-7-104(4) and shall not be made public except upon the

commencement of a subpoena enforcement proceeding as authorized by W. Va. Code § 46A-7-104(4) or a civil action to enforce the WVCCPA as authorized by W. Va. Code § 46A-7-108.

INSTRUCTIONS

For the purpose of complying with this Subpoena the following instructions shall apply:

1. "Thaxton" refers collectively to Steve A. Thaxton, Thaxton Wholesale Meats, LLC, their employees, agents, servants, salespersons and independent contractors.
2. The scope of this Subpoena encompasses all the documents of Thaxton, wherever situated, including those documents in the possession and control of Thaxton's officers, directors, partners, owners, members, managers, employees, agents, servants, and branch offices.
3. If necessary, Thaxton shall assist the designated representative(s) from the West Virginia Office of the Attorney General in locating the schedule of documents requested in this subpoena.
4. In the event that Thaxton refuses to produce any documents requested herein on grounds of privilege, Thaxton shall identify such documents and disclose the grounds for such claim of privilege.
5. The scope of this Subpoena is the period beginning May 9, 2013 or the date that Thaxton commenced operations, up to and including the present, unless otherwise noted.
6. Whenever data requested by this subpoena is stored electronically, it shall be produced electronically in Microsoft Excel, Access, or in another mutually agreeable, searchable electronic format.
7. Whenever this Subpoena requests production of a document that does not exist or cannot be produced because it is not in your possession or control, you must state so affirmatively in your response.

8. Whenever the Subpoena requests information in the form of a question or interrogatory, you must also produce all documents that verify or support your response.

9. Unless otherwise noted, the scope of this Subpoena is limited to Thaxton's business operations in West Virginia and the sale of its meats to West Virginia Consumers.

DEFINITIONS

For the purpose of complying with this Subpoena the following Definitions shall apply:

1. "Document" shall mean and include, but is not limited to, the original and all drafts of all written or graphic matter, however produced or reproduced of any kind or facsimiles, summaries, financial statements, diaries, communications, invoices, receipts, log books, e-mails, telegrams, ledgers, accounts, minutes, pamphlets, notes, interoffice communications, training materials, records of meetings, conferences and telephone or other conversations or communications, and any electronic or magnetic record of information whether prepared by you or any other person that is in your custody, possession, or control.

2. "You" or "your" shall have the same meaning as that of "Thaxton" in item 1 above in these Instructions.

3. As used herein, the word "pertaining" includes containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

4. As used herein, the word "identify" or "identification" shall mean, at a minimum, that you must provide the name, address and telephone number of the individual or company. When referring to an individual, both home and work telephone numbers shall be provided.

6. As used herein, the term "list" shall mean compilation of the requested electronically stored data or information in the manner, order, or sequence as necessary to comply with the request.

7. As used here, "advertisement" means the publication, dissemination or circulation of any matter orally, in writing, electronically, or by any means and in any media whatsoever, including the Internet, for the purpose of inducing any person to enter into any obligation, sign any contract, or acquire any interest in goods or services.

8. The term "meat" shall mean and include beef, poultry, pork, seafood and all other perishable food products sold by Thaxton.

9. The term "West Virginia Consumers" shall mean all persons who purchased meat from Thaxton, its sales persons, agents, employees or independent contractors at their homes in West Virginia.

SCHEDULE OF DOCUMENTS AND INTERROGATORIES

1. Identify Thaxton and its parent companies, subsidiaries, affiliates, and their principal owners, officers, directors, managers, and any persons with an ownership interest in Thaxton, and produce all documents that verify or support your response to this item.

2. Produce an organizational flowchart or graphic illustration that depicts the supervisory chain of command for Thaxton, its employees, agents, and independent contractors, which identifies the lowest ranking positions by job title or classification and likewise identifies the next ranked and all successive supervisory positions up to and including Thaxton's highest ranking management employee, principal officers, and owner.

3. Identify all employees, independent contractors, agents, and other persons who currently are or have ever been employed by Thaxton for the purpose of selling meats, directly or indirectly, to consumers for or on behalf of Thaxton.

4. Produce all contracts, agreements, or other documents that define the relationship between Thaxton and each of the employees, independent contractors, and agents that you identified in your response to the preceding item, including exemption certificates or other tax related documents completed by such persons.

5. Produce copies of the business registration certificate for each of the persons that you identified as independent contractors in your response to the preceding item.

6. Produce all written materials used by Thaxton in the training of its employees, independent contractors, and agents in the sale of meats for or on its behalf, including materials that explain a seller's obligation to provide consumers with notice of their three-day right to cancel in door-to-door sales as required by the FTC Rule and documents prepared or furnished by Thaxton to assist sellers in fulfilling their obligations to buyers under the FTC Rule. If no such written materials exist, explain how Thaxton trains its sellers or independent contractors about their obligation to provide notice of the three-day right to cancel to consumers as required by the FTC Rule.

7. If it is your position that persons who sell meat to consumers for or on behalf of Thaxton are independent contractors as opposed to employees, explain the basis for your position and produce all documents in your possession that verify your response or support your position.

8. Describe how Thaxton's employees, sales persons, agents, and employees are paid or compensated for their services. If any contract or written agreement exist that documents payment, compensation, or commission, produce the same.

9. Identify all income taxation forms completed and/or prepared by you for employees or independent contractors.

10. State whether Thaxton's employees, sales persons, agents, and independent contractors are covered under workers compensation and, if so, identify the company that provides workers compensation coverage.
11. State whether Thaxton provides or furnishes any of the following things to its employees, sales persons, agents, or independent contractors: brochures; sales documents; vehicles; refrigeration equipment to store meat; logos; and any other items intended to assist in the sale of meats to West Virginia Consumers or the marketing of the same. If so, produce a copy of each document and describe each such item.
12. State whether persons Thaxton characterizes as independent contractors pay Thaxton for the use of its vehicles, refrigeration equipment, or any other items furnished by Thaxton and, if so, explain what and how.
13. State whether Thaxton receives or retains a portion of the sales of its meat to consumers and, if so, explain what and how.
14. Identify all vehicles provided by Thaxton to persons who sell meats to consumers for or on its behalf, and produce copies of the titles to each such vehicle.
15. State whether Thaxton provides insurance coverage of any kind or type for the vehicles you identified in response to the preceding item or for the persons who operate those vehicles while selling meats to consumers, and produce copies of all declaration pages.
16. State the date when Thaxton first commenced operations and provide copies of all business registration certificates held by Thaxton from the date it first commenced business in West Virginia up to and including the present.
17. Explain the process undertaken by Thaxton to screen or undertake criminal background investigations prior to hiring or authorizing persons to sell meat for or on its behalf to consumers, and provide all documents that verify or support your response.

18. Produce copies of the drivers licenses of all persons who currently are or have ever been employed by Thaxton to sell meats for or on its behalf to consumers and explain what additional steps if any are taken by Thaxton to investigate the past driving history of all such persons.
19. Produce all documents in your possession that list the products sold by Thaxton and the prices for the products.
20. Produce all documents that explain Thaxton's sales and business operations.
21. Produce records of all meats sold by Thaxton to employees or independent contractors for the purpose of resale to consumers from the date it commenced operations up to and including the present.
22. Produce a copy of all written contracts that memorialize the sale of meat by Thaxton's sales persons or independent contractors to West Virginia Consumers.
23. Produce all documents constituting proof that West Virginia Consumers were provided with their buyer's right to cancel and notice of cancellation, from the date Thaxton first commenced operations up to and including the present.
24. Provide a copy of the contract between Thaxton and any merchant banks that it has used for acceptance of payments by credit card from consumers from the date Thaxton first commenced operations up to and including the present.
25. Provide records of all charge-backs issued by banks on credit card purchases from Thaxton, including the date and amount of each charge-back, the name of the sales person, and the name of the consumer who disputed the charge.
26. Describe all civil actions or administrative proceedings or matters in arbitration that have ever been filed by or against Thaxton relating to the purchase of meat by providing the complete style of each case, including the civil action number; the name of the court where the

case was filed; a copy of the complaint and/or answers and counterclaims, if any; and the final dispositional or latest substantive order or decree.

27. Identify all persons or companies that perform bookkeeping or accounting services for Thaxton.

28. Produce copies of all advertisements that Thaxton has published or that Thaxton has caused to be published by others pertaining to the sale of meat, including advertisements published in print or electronic media, including newspapers, television, radio stations, the Internet, or communicated in any manner or in any media.

29. Describe any investigations, enforcement proceedings, or communications received by Thaxton from the Internal Revenue Service, the State Tax Department, and any other state or federal law enforcement or regulatory agency concerning the alleged tax liability of Thaxton for its independent contractors or that question whether Thaxton's sales persons are independent contractors. If there are any, produce copies of all communications and substantive documents pertaining to the matter, including documents stating the outcome of such matter.

Given under my hand this 14th day of May, 2015.

PATRICK MORRISEY
ATTORNEY GENERAL

By: 
NORMAN GOOGEL (W. Va. State Bar No. 1438)
SENIOR ASSISTANT ATTORNEY GENERAL



PATRICK MORRISEY
ATTORNEY GENERAL

PHYSICAL ADDRESS:
812 Quarrier St.
Charleston, WV 25301

MAILING ADDRESS:
P.O. Box 1789
Charleston, WV 25326-1789

E-Mail: consumer@wvago.gov
<http://www.wvago.gov>

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

Consumer Protection
and Antitrust Division
(304) 558-8986

Consumer Hotline
1-800-368-8808

Preneed Funeral Services
(304) 558-8986

Fax: (304) 558-0184

July 17, 2015

*VIA United States Postal Service First Class Mail
and Electronic Transmission: wsshepherd@frontier.com*

Walton S. Shepherd, III
P.O. Box 13249
Sissonville, WV 25360-0249

RE: Investigation of Steven A. Thaxton and Thaxton Wholesale Meats, LLC

Dear Mr. Shepherd:

We have reviewed the ANSWER OF STEVE A. THAXTON AND THAXTON WHOLESALE MEATS, L.L.C. TO INTERROGATORIES AND SCHEDULE OF DOCUMENTS ("Thaxton's Response to Subpoena") that we received on June 17, 2015, and have determined that Thaxton has not substantially complied with the subpoena as explained below. Thaxton has thirty (30) days to fully comply with the subpoena to avoid other enforcement action.

Item 2: This item requires that Thaxton produce an organizational flow chart or graphic illustration depicting the supervisory chain of command for all of its employees, agents, and independent contractors. In Thaxton's Response to Subpoena, you state that he "acts as a sole proprietor and solely controls and manages the business." However, our investigation has identified other persons who are involved in the business in apparent managerial capacities, such as Kenneth McDaniel, whose name is listed on the pre-printed brochure that Thaxton provides to his sales persons. Thaxton must provide a complete response to this item.

Item 3: This item requires Thaxton to identify all employees, independent contractors, agents, and other persons who currently are or have ever been employed by Thaxton for the purpose of selling meats, directly or indirectly, to consumers for or on behalf of Thaxton. In Thaxton's Response to Subpoena, you state: "This Interrogatory is too burdensome and any information provided would in all likelihood be incomplete and, therefore, incorrect." Thaxton maintains that all of his sales persons are independent contractors. Insurance documents produced in response to the subpoena identify eight persons in addition to Steven Thaxton who are insured to drive Thaxton's vehicles: Kenneth McDaniel; Jacob Wright; Steven Starkey; Andrew Wilson; Roger Copen; Jessica Todd; Leslie D. Woods, II; and Stacy Buckhannon, which is in direct contravention to any burden requirement. Since Thaxton Wholesale Meats, LLC was

created on May 9, 2013 and these persons have been covered by Thaxton's insurance policies, this is not a burdensome request. Full compliance is required.

Item 4: This item requires Thaxton to produce all contracts, agreements, or other documents that define the relationship between Thaxton and each of the employees, independent contractors, and agents that you identified in response to Item 3 of the subpoena, including exemption certificates or other tax related documents completed by such persons. In Thaxton's Response to Subpoena to this item, you stated: "All independent contractors do not have a written agreement with Thaxton." While that may be true, Thaxton previously provided us with copies of exemption certificates for William Norris, Kenneth McDaniel, and Joseph Michael Burge, so such documentation exists. Thaxton must produce the exemption certificates and any other tax related documents in its possession relating to all of its employees or independent contractors.

Item 8: This item requires Thaxton to describe how its employees, sales persons, agents, and employees are paid or compensated for their services. In Thaxton's Response to Subpoena, you acknowledged that independent contractors pay Thaxton for the products consigned to it and that the compensation for independent contractors is based upon their sales volume. In order to comply with this item, Thaxton must describe specifically the manner in which independent contractors pay for products that they sell for Thaxton, as well as the procedure in place that dictates the amount of their compensation based upon their sales volume as required by the subpoena.

Item 9: This item requires Thaxton to identify all income taxation forms completed and/or prepared for its employees or independent contracts. In Thaxton's Response to Subpoena, you stated: "Refused." Thaxton must comply with this item.

Item 12: This item requires Thaxton to explain how its alleged independent contractors pay for meat sold and pay for the use of the vehicles. In Thaxton's Response to Subpoena, you failed to state how contractors pay Thaxton for the use of the vehicles. Thaxton must comply with this item of the subpoena.

Item 13: This item requires Thaxton to explain whether he receives or retains a portion of the sales of meat to consumers. In Thaxton's Response to Subpoena, you merely stated that Thaxton does retain a portion of the sales "on a sliding scale based upon sales volume" without further explanation. Thaxton must provide a more specific explanation as required by this item of the subpoena.

Item 16: This item requires Thaxton to produce copies of all business registration certificates held by Thaxton from the date it first commenced business in West Virginia up to and including the present. In Thaxton's Response to Subpoena, you merely responded that Thaxton's records from 2013 and 2014 were lost. Thaxton must obtain new copies of these records and provide them to us as required by the subpoena.

Thaxton Wholesale Meats, LLC
July 17, 2015
Page No. 3

Item 18: This item requires Thaxton to produce copies of the drivers license of all persons who currently are or have ever been employed by Thaxton to sell meats for or on its behalf to consumers. In Thaxton's Response to Subpoena, you failed to produce these documents. Thaxton must produce the drivers license of all such persons as required by this item of the subpoena.

Item 21: This item requires Thaxton to produce records of all meat sold by Thaxton to persons characterized as employees or independent contractors for the purpose of resale to consumers from the date it commenced operations up to and including the present. In Thaxton's Response to Subpoena, you stated: "Refused as confidential." Thaxton must produce all such records as required by this item of the subpoena.

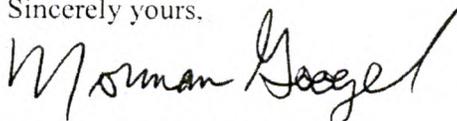
Item 22: This item requires Thaxton to produce a copy of all written contracts that memorialize the sale of meat by Thaxton's sales persons or independent contractors to West Virginia consumers. Thaxton produced records from sales during one week in June, 2015, and stated that such sales records are not retained because "sales are not subject to rescission after three days." This response is not credible. Thaxton must either produce the records of all such written contracts that memorialize the sales of its meat to consumers to acknowledge that no such written contracts existed.

Item 24: This item requires Thaxton to produce the copy of its contract with merchant banks pertaining to acceptance of payments by credit cards. In Thaxton's Response to Subpoena, you stated: "Refused as privileged and confidential information." Thaxton must produce its contracts with merchant banks as required by this item of the subpoena.

Item 25: This item requires Thaxton to produce records of all charge-backs issued by banks on credit card purchases from Thaxton. In Thaxton's Response to Subpoena, you stated: "Refused as the inquiry has no relevance a to the subject complaint." Thaxton must produce records of all charge-backs as required by this item of the subpoena.

Thaxton must fully comply with the subpoena within 30 days from the date of this letter. If Thaxton fails to do so, we may file a petition to enforce the subpoena with the Circuit Court of Kanawha County in which we will seek an order compelling full compliance and reimbursement for our costs, including attorneys fees. Thank you for your anticipated cooperation in this matter.

Sincerely yours,



NORMAN GOOGEL
SENIOR ASSISTANT ATTORNEY GENERAL

NAG/tma