

FILED

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

2017 OCT 10 AM 11: 51

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

J.E. HOOD  
CIRCUIT CLERK  
CABELL CO. WV

Plaintiff/Petitioner,

v.

Civil Action No. 17-C-568  
Judge /s/ CHRISTOPHER D. CHILES

SAFE & SOUND INSPECTION  
SERVICES, LLC, and IVAN LEON HARLESS,  
Individually and as sole member/manager  
of Safe & Sound Inspection Services, LLC,

Defendants/Respondents.

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

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Plaintiff, the State of West Virginia ex rel. Patrick Morrisey, Attorney General ("the State" or "Attorney General"), files this Complaint asking the court to temporarily and permanently enjoin the above-named Defendants, Safe & Sound Inspection Services, LLC, and Ivan Leon Harless, individually and as sole member/manager of Safe & Sound Inspection Services, LLC, 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**

### ***The Plaintiff***

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 the sale and financing of consumer goods and services.

### ***The Defendants***

2. Defendant Safe & Sound Inspection Services, LLC, was a limited liability domestic corporation until December 30, 2014 at which time the West Virginia Secretary of State administratively dissolved the corporation for failure to file an annual report. Defendant continued to operate as Safe & Sound Inspection Services, LLC, despite its administrative dissolution. A copy of the Certificate of Administrative Dissolution is attached hereto and incorporated by reference herein as Exhibit 1.

3. Safe & Sound Inspection Services, LLC, has its principal location at 6116 East Pea Ridge Road, Suite 32, Huntington, Cabell County, West Virginia.

4. Ivan Leon Harless is a resident of Cabell County, West Virginia with a mailing address of 533 Buffington Street, Huntington, West Virginia.

5. Ivan Leon Harless is and was the sole member and manager of Safe & Sound Inspection Services, LLC, at all times pertinent hereto. He was the sole employee, running the day-to-day operations of the company, conducting all sales and services, collecting payments from consumers, negotiating contracts with consumers, resolving consumer complaints, ordering supplies, and all other activities of the corporation

6. As the sole member/manager of Safe & Sound Inspection Services, LLC, Harless had the authority and duty to set policies and practices for that corporation during the time the business was a properly licensed and registered limited liability company.

7. Harless has managed and controlled the day-to-day business operations of Safe & Sound Inspection Services, LLC, during the relevant time period, including operations after the administrative dissolution of the corporation.

8. Harless prepared all estimates, performed all inspections, accepted payments from consumers, and accompanied some consumers to their banks to obtain cash payments.

9. Harless participated in, approved of, sanctioned, or ratified the marketing, sales, and business practices of Safe & Sound Inspection Services, LLC.

10. To adhere to the fiction of a separate corporate existence between the defendants Safe & Sound Inspection Services, LLC, and Harless would sanction fraud and promote injustice. Accordingly, Safe & Sound Inspection Services, LLC, and Harless will hereinafter be referred to collectively as "Safe & Sound."

### ***Jurisdiction and Venue***

11. 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.

12. Venue is proper in this court pursuant to W. Va. Code § 46A-7-114.

## **II. PROCEDURAL FACTS**

13. Safe & Sound conducts business as a home inspector in West Virginia.

14. Safe & Sound sells home inspection services to consumers and also offers services of water removal and mold remediation.

15. In February 2015, the West Virginia Attorney General's office started receiving calls and complaints against Safe & Sound from consumers.

16. Consumers complained that Safe & Sound charged them for goods and services but failed to provide the goods and services as agreed.

### ***Background and Applicable Law***

17. Safe & Sound engaged in the business of contracting with West Virginia consumers for water removal and mold remediation services and products. As such, Safe & Sound business practices are subject to the provisions set forth in the WVCCPA, which is regulated by the Attorney General pursuant to W. Va. Code § 46A-7-101.

18. The WVCCPA provides: "Unfair methods of competition and unfair or deceptive act or practices in the conduct of any trade or commerce are hereby declared unlawful." *See* W. Va. Code § 46A-6-104.

19. The WVCCPA defines "unfair methods of competition and unfair or deceptive acts or practices" to mean and include, but not be limited to, the following:

(M) 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.

W. Va. Code § 46A-6-102(7)(M).

20. Repeated and willful violations of the WVCCPA may subject the violator to civil penalties of up to \$5,000 for each violation, in accordance with W. Va. Code § 46A-7-111(2).

### **III. RELEVANT PERIOD OF TIME**

21. The relevant period of time for this civil action is at least since March 24, 2010 and continuing to the present.

### **IV. STATEMENT OF FACTS**

#### ***The Attorney General's Investigation***

22. The Attorney General received complaints from consumers reporting that they paid Safe & Sound for water removal and/or mold remediation goods and services and Safe & Sound failed to provide those goods and services.

23. The consumers requested Safe & Sound to complete the work or refund their payments.

24. Safe & Sound refused to complete the work or provide consumers with refunds.

25. Harless was indicted in Cabell County, West Virginia in 2016 for obtaining goods by false pretenses by agreeing to perform mold remediation at a consumer's home and failing to perform the work. A copy of the indictment is attached hereto and incorporated by reference herein as Exhibit 2.

26. Harless entered into a plea agreement in the Circuit Court of Cabell County, West Virginia on January 5, 2017 admitting to accepting money under false pretenses under circumstances identical to those complained of herein. A copy of the plea agreement is attached hereto and incorporated by reference herein as Exhibit 3.

## **V. CLAIMS FOR RELIEF**

### **FIRST CAUSE OF ACTION**

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

28. Safe & Sound accepted payments from consumers for work it failed to perform or to complete.

29. This conduct is an unfair or deceptive act or practice as defined by W. Va. Code § 46A-6-102(7)(M) and violates W. Va. Code § 46A-6-104.

### **SECOND CAUSE OF ACTION**

#### **(Personally Liability of Harless for the Unlawful Actions and Unfair or Deceptive Acts or Practices Committed in the Name of Safe & Sound Home Inspections, LLC)**

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

31. The defendant, Ivan Leon Harless, is the sole member, manager, and employee of Safe & Sound Inspection Services, LLC.

32. Ivan Leon Harless personally visited consumers' homes offering to provide water and mold remediation services.

33. Ivan Leon Harless personally accepted payment from consumers for good and services he never provided.

34. Safe & Sound Inspections Services, LLC is merely the alter ego of Ivan Leon Harless.

35. The business scheme created by Ivan Leon Harless and promoted under the name of Safe & Sound Inspection Services, LLC was for the purpose of inducing consumers to pay for goods and services that he never provided.

36. Ivan Leon Harless was the sole beneficiary of the money obtained through the unlawful and unfair or deceptive acts or practices he committed in the name of Safe & Sound Inspection Services, LLC.

37. It is in the public interest to disregard the legal fiction that Safe & Sound Inspection Services, LLC is a separate entity from its owner, Ivan Leon Harless.

38. To provide Ivan Leon Harless a corporate shield would result in inequitable consequences.

## **VI. INJUNCTIVE RELIEF**

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

40. Pursuant to the West Virginia Consumer Credit and Protection Act, including notably W. Va. Code §§ 46A-7-108 through -110, the State seeks to temporarily and permanently enjoin the Defendants/Respondents from any ongoing current violations as well as prohibit similar unlawful conduct in the future.

41. The State also seeks an immediate temporary injunction restraining the Defendants/Respondents from soliciting, marketing, or selling home inspection and mold remediation services, as well as water removal, in the State of West Virginia until such time as this Court may make a final determination in this matter.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, the State requests that the Court grant the following relief against the Defendants/Respondents, Safe & Sound LLC and Ivan Leon Harless, jointly and severally:

### **Temporary Relief**

That this Court schedule a hearing on this petition for preliminary injunction and enter an order that:

1. Temporarily restrains the Defendants/Respondents from engaging in the sale of consumer goods and services in the State of West Virginia until such time as this matter is resolved.

### **Permanent Relief**

The State further requests that, upon a final hearing, this Court grant the following permanent relief:

1. An Order declaring the conduct of Safe & Sound Inspections Services, LLC and Harless, as described herein, to be in violation of the WVCCPA;
2. An Order declaring Ivan Leon Harless, as sole member and manager of Safe & Sound L.L.C., to be personally liable for all actions done in the name of Safe & Sound L.L.C., for the payment of all money awarded to the State by this Court, and subject to all injunctive relief order by this Court;
3. An Order requiring that the Defendants/Respondents, jointly and severally, be required to provide full refunds to all West Virginia consumers who complained to the Attorney General that they paid Safe & Sound for goods and services it failed to provide;
4. An Order requiring the Defendants/Respondents, jointly and severally, to pay the State of West Virginia a civil penalty of Five Thousand Dollars (\$5,000.00) for each and every violation of the Act, pursuant to W. Va. Code § 46A-7-111(2), and further requiring that



said sum shall be used at the discretion of the Attorney General for any one or more of the following purposes: direct and indirect administrative, investigative, compliance, enforcement or litigation costs and services incurred for consumer protection purposes; to be held for appropriation by the Legislature; and/or distribution to taxpayers and/or consumers.


5. An Order requiring that the funds for refunds and civil penalties be paid to the State within ten (10) days of the entry of the order;

6. An Order requiring that the Defendants/Respondents, jointly and severally, pay the cost of investigation, litigation, and administration of this matter and the State's attorney fees;

7. An Order granting other further relief as this Court may deem just and proper.

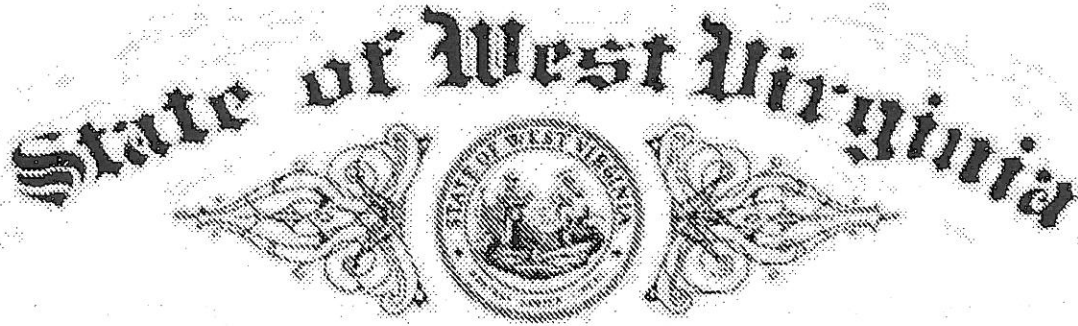
Respectfully submitted:

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



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R. Stephen Jarrell (WV Bar No. 6787)  
Assistant Attorney General  
Consumer Protection/Antitrust Division  
Office of the West Virginia Attorney General  
Post Office Box 1789  
Charleston, WV 25326-1789  
Telephone: 304-558-8986  
Facsimile: 304-558-0184



I, Natalie E. Tennant, Secretary of State, of the State of West Virginia, hereby certify that

## SAFE & SOUND INSPECTION SERVICES, LLC

has failed to file its annual report and/or pay the annual report fee as required by West Virginia law.

Therefore, I issue this

## CERTIFICATE OF ADMINISTRATIVE DISSOLUTION



Given under my hand and the Great Seal of West Virginia  
on this day

(December 30, 2014)

**EXHIBIT**

**1**

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA

2016-11-25 IN 4:25 NO. 116-F-99

vs.

IVAN LEON HARLESS,

WEST VIRGINIA CODE: 61-3-24(a)(2)  
61-3-18  
61-3-24(d)

ALFRED E. FERGUSON

OFFENSE: OBTAINING GOODS BY FALSE  
PRETENSES, TRANSFERRING  
STOLEN PROPERTY,  
FRAUDULENT SCHEMES

THE GRAND JURY CHARGES:

COUNT I

That on or between the 24th day of August, 2015 and the 31st day of August, 2015, in the County of Cabell, State of West Virginia, IVAN LEON HARLESS committed the offense of "OBTAINING GOODS BY FALSE PRETENSES" by unlawfully and feloniously obtaining money from Ellen Hutchinson-Bronosky, and as a result of said false pretenses made with intent to defraud, did obtain money in an amount of \$1,000.00, or more, and to which Ivan Leon Harless was not entitled, by agreeing to perform mold cleaning at the residence located at 201 West 9th Avenue, Huntington, Cabell County, West Virginia, , to-wit: receiving \$1,500.00 to perform said work that he failed and never intended to perform, against the peace and dignity of the State.

COUNT II

That on or about the 2nd day of September, 2015, in the County of Cabell, State of West Virginia, IVAN LEON HARLESS committed the offense of "TRANSFERRING STOLEN PROPERTY" by unlawfully and feloniously transferring to Cash Express Pawn located at 707 Washington Avenue, Huntington, Cabell County, West Virginia any stolen goods or other thing of value, which he knew or had reason to believe had been stolen, with a value of one thousand dollars (\$1,000.00) or more, to-wit: an LG 42 inch TV, a Vizio 22 inch TV and a Sansui 19 inch TV with a total value of approximately \$1,000.00, against the peace and dignity of the State.

COUNT III

That on or about the 6th day of September, 2015, in the County of Cabell, State of West Virginia, IVAN LEON HARLESS committed the offense of "FRAUDULENT SCHEMES" by unlawfully, willfully, and feloniously obtaining a 1996 Dodge Grand Caravan from Michelle Spreker by false pretense, token, or representation, with the intent to defraud, of a value of one thousand dollars or more, to-wit: by purchasing the vehicle from Michelle Spreker writing a check in the amount of \$2,187.00 from a closed account, against the peace and dignity of the State.

EXHIBIT  
2

COUNT IV

That on or about the 17th day of September, 2015 and the 22<sup>nd</sup> day of September, 2015 in the County of Cabell, State of West Virginia, IVAN LEON HARLESS committed the offense of "FRAUDULENT SCHEMES" by unlawfully, willfully, and feloniously obtaining money from United Bank located at 2889 3rd Avenue, Huntington, Cabell County, West Virginia by false pretense, token, or representation, with the intent to defraud, of a value of one thousand dollars or more, to-wit: by receiving \$4,830.00 by opening an account by depositing checks from a closed Chase Bank Account, against the peace and dignity of the State.

A TRUE BILL



PROSECUTING ATTORNEY

~~ASSISTANT PROSECUTING ATTORNEY~~

CABELL COUNTY, WEST VIRGINIA



FOREPERSON

**FILED**

IN THE CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA - 5 AM 0:47

Plaintiff,

J.E. HOOD

INDICTMENT NO. 16-F-99

VS.

CIRCUIT COURT  
CABELL CO. W.V.

Judge Alfred E. Ferguson

IVAN LEON HARLESS,

Defendant.

**GUILTY PLEA ORDER**

On this the 19th day of December, 2016, came the defendant, in person and by counsel, Kerry Nessel, and also came the State of West Virginia by Kellie Neal, Assistant Prosecuting Attorney, appearing on behalf of Jara Howard, Assistant Prosecuting Attorney of Cabell County, West Virginia, and the Court, upon being advised that the defendant desires to enter a plea of guilty to the following offense(s):

Count I the Felony offense "Obtaining Goods by False Pretenses" as contained in Indictment No. 16-F-99

Count III the Felony offense "Fraudulent Schemes" as contained in Indictment No. 16-F-99

The Court proceeded to inquire of both the defendant and counsel concerning matters pertinent to the defendant's entering a plea of guilty before this Court.

This Court, after due consideration of the facts and circumstances developed by said inquiry, the responses and statements made by the defendant, and the statements made by both counsel for the defendant and counsel for the State does accordingly find as follows:

That the defendant and his counsel have received a copy of the Indictment in this case, and a further finding that the defendant understands the nature and meaning of the charges contained in said Indictment;

That the defendant has counsel, competent in criminal matters, and that the defendant is totally satisfied with the representations and advice he has received from said counsel;

**EXHIBIT**

**3**

That the defendant has consulted with and has been advised by his counsel with respect to his constitutional rights and his waiver thereof;

That the defendant understands that he has a right to a trial by an impartial jury of twelve (12) persons and a right to have the State prove its case beyond a reasonable doubt, but by pleading guilty understands that he would not receive such a trial;

That the defendant understands he has a right to stand silent during the proceedings;

That the defendant understands he has a right to confront and cross examine his accusers;

That the defendant understands he has a right to present witnesses in his own defense and to testify in his own defense;

That the defendant understands he has a right to appeal the conviction for any errors of law;

That the defendant understands he has a right to move to suppress illegally obtained evidence and illegally obtained confessions, and the right to challenge, in the trial Court and on appeal, all pretrial proceedings, and;

That the defendant understands that by pleading guilty he waives all pre-trial defects with regard to, among others, arrest, the gathering of evidence and prior confessions, as well as all non-jurisdictional defects in the criminal proceeding;

That in regard to Count I of said indictment, the Defendant understands he may be sentenced to the West Virginia Penitentiary for a period of not less than one year nor more than ten years;

That in regard to Count III of said indictment, the Defendant understands he may be sentenced to the West Virginia Penitentiary for a period of not less than one year nor more than ten years;

That the defendant has knowingly and intelligently waived all of his constitutional rights;

That there exists a factual basis for the acceptance of this plea.

That he has freely, voluntarily, intelligently, knowingly, and understandingly tendered unto this Court both his oral and written plea of guilty to the charge of "Obtaining Goods by False Pretenses, a provable offense as contained in Count I of Indictment No. 16-F-99.

That he has freely, voluntarily, intelligently, knowingly, and understandingly tendered unto this Court both his oral and written plea of guilty to the charge of



"Fraudulent Schemes", a provable offense as contained in Count III of Indictment No. 16-F-99.

THEREFORE, this Court is of the opinion to and does hereby accept the defendant's oral and written plea of guilty tendered unto this Court and hereby ORDERS and DIRECTS that said written plea be filed and made a part of the official record of this case.

Upon said plea, this Court doth ADJUDGE the defendant guilty of "Obtaining Goods by False Pretenses", a provable offense as contained in Count I of Indictment No. 16-F-99 and guilty of "Fraudulent Schemes", a provable offense as contained in Count III of Indictment No. 16-F-99 and this matter is hereby set down for sentencing on March 16, 2017 at 10:00 AM.

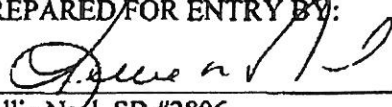
It is the ORDER of the Court that the Cabell County Probation Department complete a Presentence Investigation in this matter prior to the March 16, 2017.

The Clerk of this Court is hereby directed to provide certified copies of this order to all counsel of record and the Cabell County Probation Office.

ORDER:  
ENTER:

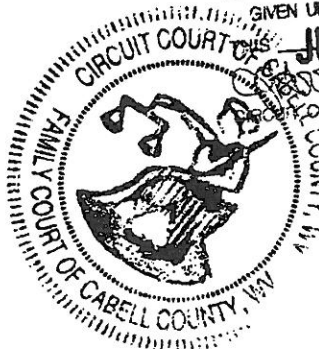
  
Alfred E. Ferguson, Judge

PREPARED FOR ENTRY BY:

  
Kellie Neal, SB #2806  
Assistant Prosecuting Attorney  
Appearing on behalf of  
Jara Howard, SB#6606  
Assistant Prosecuting Attorney  
Cabell County Courthouse  
750 5th Avenue, Suite 350  
Huntington, West Virginia  
(304) 526-8653

STATE OF WEST VIRGINIA  
COUNTY OF CABELL  
I, JEFFREY E. HOOD, CLERK OF THE CIRCUIT  
COURT FOR THE COUNTY AND STATE AFORESAID  
DO HEREBY CERTIFY THAT THE FOREGOING IS A  
TRUE COPY FROM THE RECORDS OF SAID COURT  
ENTERED ON 6-28-17

GIVEN UNDER MY HAND AND SEAL OF SAID COURT



JUN 28 2017

CLERK

CIRCUIT COURT OF CABELL COUNTY, WEST VIRGINIA