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AUG 04 2017

VIRGINIA:

CONSUMER PROTECTION SECTION

IN THE CIRCUIT COURT OF THE CITY OF LYNCHBURG

COMMONWEALTH OF VIRGINIA, )  
 EX REL. MARK R. HERRING, )  
 ATTORNEY GENERAL, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 VIRGINIA SILVERSMITHS, INC., )  
 a Virginia corporation, )  
 )  
 and )  
 )  
 LINDSAY W. MARTIN, )  
 an Individual, )  
 )  
 )  
 Defendants. )  
 )

CIVIL ACTION NO. CL15000823

CONSENT JUDGMENT

The Plaintiff, Commonwealth of Virginia, by, through and at the relation of the Attorney General of Virginia, Mark R. Herring (the "Commonwealth" or the "Plaintiff"), and Defendants, Virginia Silversmiths, Inc. ("Virginia Silversmiths" or the "Corporate Defendant") and its President, Lindsay W. Martin ("Martin" or the "Individual Defendant"), have resolved the matters in controversy between them and have agreed to the terms of this Consent Judgment, as follows:

**I. STIPULATED RECITALS**

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

enforce violations of the Virginia Consumer Protection Act (“VCPA”), Virginia Code §§ 59.1-196 to 59.1-207.

2. The Corporate Defendant, Virginia Silversmiths, Inc., was a Virginia corporation having its principal office at 6101 Boonsboro Road, Lynchburg, Virginia 24503. Its Certificate of Incorporation was issued by the State Corporation Commission (“SCC”) on June 28, 2001. The SCC involuntarily terminated the corporate existence of Virginia Silversmiths on October 31, 2005 and purged the company’s registration effective December 31, 2010.

3. The Individual Defendant, Lindsay W. Martin, resided at 120 Stillhouse Run, Lynchburg, Virginia 24503, until around July 2015, and has resided at 3 Country Manor Drive, Fredericksburg, Virginia 22406, since September 2015. Martin was the sole director and principal officer of the Corporate Defendant.

4. Based upon written complaints and other materials received by the Office of the Attorney General of Virginia and its subsequent investigation, the Commonwealth filed a Complaint alleging that the Defendants violated § 59.1-200(A)(5) and (14) of the VCPA, by charging and accepting down payment monies and other payments for silver and fine metal repair and restoration services when they had no intention to perform or complete those services.

5. In this connection, the Commonwealth contends that with some of its transactions, and particularly its transactions between September 2011 and October 2014, the Corporate Defendant and Martin engaged in a pattern and practice of charging down payment monies and complete payments from customers and thereafter failing to start or complete the contracted-for work, provide refunds, or even return the silver objects that were the subject of the repairs despite repeated requests for those actions from their customers.

6. At the time the Complaint was filed, the Commonwealth was aware of six

consumers who were owed \$2,641.00 in the aggregate for amounts they paid to the Corporate Defendant and/or the Individual Defendant for work which was never completed. These complainants and their property are identified in Exhibit A. The same six consumers gave possession of their silver items to the Corporate Defendant and/or the Individual Defendant and had yet to have their items returned.

7. In the months after the Complaint was filed, the Commonwealth identified eleven additional consumers who were owed \$1,955 in the aggregate for amounts they paid to the Corporate Defendant and/or the Individual Defendant for work which was never completed. These complainants and their property are identified in Exhibit B. The same eleven consumers gave possession of their silver items to the Corporate Defendant and/or the Individual Defendant and had yet to have their items returned.

8. On August 12, 2016 and October 6, 2016, Mr. Martin delivered all of the disputed silver items listed in Exhibits A and B to the Office of the Attorney General in Richmond. Staff at the Office of the Attorney General contacted individual complainants, confirmed that certain property belonged to them, and sent the goods to them via commercial carrier.

9. The property listed in Exhibits A and B has been returned to its respective owners with two exceptions. First, one silver tray has not been returned to Complainant Timothy Stanley. Mr. Stanley believes that the tray Mr. Martin delivered to the Office of the Attorney General is not the tray he provided to Mr. Martin. Mr. Stanley is working with private counsel to resolve this matter with Mr. Martin. Second, the three items belonging to Complainant Jesse Weurtz are held in escrow at the Office of the Attorney General pending the resolution of a dispute about what, if any, remaining payment may be due for completed repair work, which is outside the scope of the Complaint.

10. Two complainants owed the Defendants fees for repairs to their property. Staff at the Office of the Attorney General collected these fees before sending the property to the complainants. These fees, totaling \$625.00, have been held in escrow by the Office of the Attorney General.

11. In the interest of resolving the Commonwealth's claims, the Commonwealth and the Defendants have agreed on a basis for the settlement of the Complaint and stipulated to entry of this Consent Judgment between the parties without trial or the adjudication of the validity of any alleged issue of law or fact.

12. The Defendants do not admit nor deny the allegations set forth in the Commonwealth's Complaint, and affirmatively state that their execution of this Consent Judgment is for settlement purposes only.

13. The Defendants and the Commonwealth waive their rights to appeal from this Consent Judgment and enter into this Consent Judgment voluntarily and state that no promises of any kind were made to enter into this Consent Judgment, except as provided herein.

14. The Commonwealth's Complaint in this matter states claims upon which relief could be granted under the provisions of the VCPA.

15. The Defendants and the Commonwealth agree that the relief set forth in this Consent Judgment, including the amount of monetary restitution, costs, expenses, attorney's fees, and the injunctive relief provided, is a fair and reasonable settlement for the claims alleged by the Commonwealth.

16. The Defendants consent to and submit themselves to the jurisdiction of this Court and waive any objection they may have had to the jurisdiction of this Court over them for all matters relating to the entry, execution, monitoring, and enforcement of this Consent Judgment.

The Defendants further waive any objection they may have had to venue in this Court for matters relating to the entry, execution, monitoring, and enforcement of this Consent Judgment.

17. This Consent Judgment constitutes the entire agreement between the Defendants and the Commonwealth.

## II. ORDER

NOW, THEREFORE, based upon the advice and stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

1. Upon agreement of the parties, the Court hereby enters this Consent Judgment.
2. The Court shall retain jurisdiction to enforce the terms and conditions of this Consent Judgment.

### A. INJUNCTIVE RELIEF

3. Virginia Silversmiths, Inc., in its own name or doing business under any other trade name, its officers, directors, agents and employees, and any other persons in active concert or participation with any of them, with either actual or constructive knowledge of this permanent injunction and judgment, and Lindsay W. Martin are hereby permanently enjoined from violating §§ 59.1-200(A)(5) and (14) of the VCPA as that statute is now in effect or later amended, including but not limited to permanently enjoined from charging and receiving down payment monies and complete payments from customers and thereafter failing to start or complete the proposed work, provide refunds, or return the objects that were the subject of the contracted-for repairs.

4. The Defendants agree that engaging in such acts or practices after the Court's entry of this Consent Judgment may constitute a violation of the Consent Judgment, dependent

on the facts and circumstances to be later determined.

**B. RESTITUTION**

5. The Defendants have provided restitution to the complainants listed in Exhibits A and B pursuant to Virginia Code § 59.1-205 by providing the disputed property to the Office of the Attorney General for distribution to the complainants.

6. The Defendants agree to provide restitution in the form of returning property and/or payments received to any additional consumers who file complaints and supporting documentation related to the conduct described in Section I paragraph 4 whose complaints are received by the Office of the Attorney General within 180 days of the effective date of the Consent Judgment.

**C. ATTORNEY'S FEES, COSTS, AND EXPENSES**

7. The Commonwealth shall have judgment against, and shall recover from, the Individual Defendant the sum of ten thousand dollars (\$10,000.00), pursuant to § 59.1-206 of the VCPA, for reimbursement of its reasonable expenses, costs, and attorney's fees in investigating and preparing this action. Any of these amounts that are paid and collected shall be deposited into the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

**D. CIVIL PENALTIES**

8. The Commonwealth shall have judgment against, and shall recover from, the Individual Defendant the sum of five thousand dollars (\$5,000.00), pursuant to § 59.1-206 of the VCPA, as a civil penalty for alleged violations of the VCPA. Any amounts paid and collected shall be deposited into the Attorney General's Regulatory, Consumer Advocacy, Litigation and Enforcement Revolving Trust Fund.

**E. MISCELLANEOUS**

9. Simultaneously with the execution of this Consent Judgment, the Defendant agrees to make partial payment to the Commonwealth of six-hundred and twenty-five dollars (\$625) by releasing to the Office of the Attorney General funds currently held in escrow.

10. The Individual Defendant shall make partial payment of the judgment amounts set forth in Section II, paragraphs 7 and 8 above by delivery of ten (10) cashier's or certified checks in the amount of seven hundred thirty-seven dollars and fifty cents (\$737.50) payable to "Treasurer of Virginia" and remitted to the Office of the Attorney General, Consumer Protection Section, Attn: Tyler T. Henry, 202 North Ninth Street, Richmond, Virginia 23219, with the first check to be delivered no later than July 31, 2017, the second check to be delivered no later than August 31, 2017, the third check to be delivered no later than September 29, 2017, the fourth check to be delivered no later than October 31, 2017, the fifth check to be delivered no later than November 30, 2017, the sixth check to be delivered no later than December 29, 2017, the seventh check to be delivered no later than January 31, 2018, the eighth check to be delivered no later than February 28, 2018, the ninth Check to be delivered no later than March 30, 2018, and the tenth check to be delivered no later than April 30, 2018. Any additional fees paid to the Office of the Attorney General for the three items belonging to Complainant Jesse Weurtz referenced in Section 1, paragraph 9 that are currently held in escrow at the Office of the Attorney General will be applied to the tenth and final payment due on April 30, 2018, which will be reduced accordingly.

11. The judgment amounts set forth in Section II, paragraphs 7 and 8 of this Consent Judgment (the "Judgments") shall bear interest at the judgment rate of interest of six percent

(6%) per annum from the date the Consent Judgment is entered. If the payment set forth in Section II, paragraph 9 and the ten (10) payments set forth in Section II, paragraph 10 are each made timely, for a total of \$8,000 paid before May 1, 2018, the Commonwealth agrees to have the Judgments marked paid and satisfied, including any accrued interest. If any of the ten (10) payments are not made timely, the entire remaining balance of the \$15,000 with accrued interest shall be due and immediately owing from Defendant Martin to the Commonwealth, which may proceed with any permissible collection efforts on the Judgments.

12. If a bankruptcy proceeding is filed by or against the Individual Defendant, nothing in this Consent Judgment shall limit or remove any rights of the Commonwealth as a creditor under Title 11 of the United States Code.

13. This Consent Judgment constitutes the entire agreement between the Defendants and the Commonwealth, concludes the Office of the Attorney General's inquiry into this matter to its satisfaction, and releases the Defendants from all claims asserted, or which might have been asserted, by the Attorney General under the VCPA or otherwise arising out of the allegations set forth by the Commonwealth in its Complaint. Nothing in this Consent Judgment shall relieve the Defendants of their obligations to comply with all applicable state and federal laws.

14. Except as otherwise provided in connection with the releases discussed above, the entry of this Consent Judgment shall not bar private causes of action, if any.

15. Nothing in this Consent Judgment shall prevent the Defendants from conducting their business in a manner otherwise in accordance with the laws of the Commonwealth, the United States, or any other applicable jurisdiction.

16. This Consent Judgment may be modified only by order of this Court. After

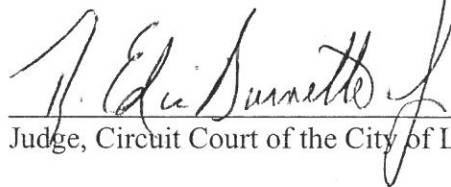


making a good faith effort to obtain the concurrence of the other party for the requested relief, the Defendants or the Commonwealth may petition this Court for modification of the terms and conditions of this Consent Judgment.

17. A violation of any provision of this Consent Judgment shall be punishable as contempt and may subject the person or entity in violation to all penalties or sanctions allowed by law.

18. The waiver or failure of any party to exercise any rights under this Consent Judgment shall not be deemed a waiver of any right or any future rights. If any part of this Consent Judgment shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Consent Judgment, which shall survive and be construed as if such invalid or unenforceable part had not been contained herein.

ENTER: 7 29 117



\_\_\_\_\_  
Judge, Circuit Court of the City of Lynchburg


A Copy. Teste:  
Eugene C. Wingfield, Clerk  
By:



\_\_\_\_\_  
Deputy Clerk

**WE ASK FOR THIS:**

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


By:   
David B. Irvin (VSB No. 23927)  
Senior Assistant Attorney General  
Tyler T. Henry (VSB No. 87621)  
Assistant Attorney General  
Consumer Protection Section  
202 North Ninth Street  
Richmond, Virginia 23219  
Phone: (804) 692-0485  
Fax: (804) 786-0122

VIRGINIA SILVERSMITHS, INC. AND LINDSAY W. MARTIN

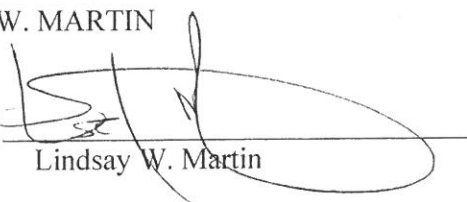
By:   
Rick Boyer, Esquire (VSB No. 80154 )  
Boyer Law Firm  
P.O. Box 10953  
Lynchburg, VA 24503  
Phone: (434) 401-2093  
Fax: (434) 239-3651  
rickboyerlaw@gmail.com

*Counsel for Virginia Silversmiths, Inc. and Lindsay W. Martin*

VIRGINIA SILVERSMITHS, INC.

By:   
Lindsay W. Martin  
President, Virginia Silversmiths, Inc.

LINDSAY W. MARTIN

By:   
Lindsay W. Martin

**Exhibit A**

<b>Complainant Name</b>	<b>Date of Transaction</b>	<b>Property Provided to Virginia Silversmiths</b>	<b>Monies Paid to Virginia Silversmiths</b>
Coleman, Guy	12/6/2013	pitcher & tray	\$325.00
Little, Keith	10/9/2014	silver bread tray	unknown
Stanley, Timothy	8/1/2013	five piece coffee & tea set; one pair of candlesticks	\$1,775.00
Taylor, David	9/8/2011	antique silver bracelet	\$277.00
Wick, William	7/1/2012	1919 Boston Marathon Second Place Finisher Cup	\$0.00
Wuertz, Jesse	6/1/2013	silver water pitcher, sugar bowl, and cream pitcher	\$264.00
<b>Total</b>			<b>\$2,641.00</b>

**Exhibit B**

<b>Complainant Name</b>	<b>Date of Transaction</b>	<b>Property Provided to Virginia Silversmiths</b>	<b>Monies Paid to Virginia Silversmiths</b>
Andersen, Mary	10/2/2013	one antique silver tea strainer	\$50.00
Ainslie, Lee	4/1/2015	one silver mint julep cup	\$0.00
Cannon, Suzanne	7/10/2015	one silver childrens tea set	\$0.00
Castle, John	5/23/2015	two silver candlesticks one silver salt shaker	\$0.00
Girling, Rowland	9/5/2014	one silver men's toilet set	\$400.00
Howle, Ethel	5/29/2015	nine Gorham silver knives	\$690.00
Jones, Francis	3/22/2014	one silver hairbrush	\$200.00
Lawson, Carol	2/23/2015	one silver candelabra	\$165.00
Melchin, Joy	1/7/2014	one silver cup	\$245.00
Riley, Barbara	3/27/2015	two Towle Old Master silver dinner knives one Towle Old Master silver salad fork	\$0.00
Shomo, Thomas	12/31/2014	one silver vase one silver knife two silver spoons one silver salt and pepper shaker set one small silver salt shaker	\$205.00
<b>Total</b>			<b>\$1,955.00</b>