

VIRGINIA:

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

COMMONWEALTH OF VIRGINIA, )  
EX REL. MARK R. HERRING, )  
ATTORNEY GENERAL, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
CAPITAL MEATS, INC., )  
a Virginia corporation, )  
 )  
Defendant. )  
\_\_\_\_\_ )

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT**

The Plaintiff, Commonwealth of Virginia, by, through, and at the relation of its Attorney General, Mark R. Herring (the "Plaintiff" or the "Commonwealth"), petitions this Court to declare that the activities in which the Defendant, Capital Meats, Inc. ("CMI" or the "Defendant"), has engaged constitute violations of the Virginia Consumer Protection Act ("VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, and the Virginia Home Solicitation Sales Act ("VHSSA"), Virginia Code §§ 59.1-21.1 through 59.1-21.7:1. The Commonwealth prays that this Court grant the relief requested in this Complaint and states the following in support thereof:

**JURISDICTION AND VENUE**

1. The Commonwealth brings this action pursuant to the authority set forth in § 59.1-203 of the VCPA, which provides, among other things, that the Attorney General may bring an action to enjoin any violation of the VCPA. Section 59.1-21.7:1 of the VHSSA subjects

violations of the VHSSA to any and all of the enforcement provisions of the VCPA.

2. The Circuit Court for Frederick County has authority to entertain this action and to grant the relief requested herein pursuant to Virginia Code §§ 8.01-620, 17.1-513, 59.1-203, 59.1-205, and 59.1-206.

3. Venue is permissible in this Court pursuant to Virginia Code § 8.01-262(1) because the Defendant previously maintained a principal place of business in Frederick County and Virginia Code § 8.01-262(3) because the Defendant conducted substantial business activity in Frederick County.

4. In accordance with Virginia Code § 59.1-203(B), prior to commencement of this action, the Plaintiff gave the Defendant written notice that these proceedings were contemplated and a reasonable opportunity to appear before the Office of the Attorney General (the "Office") to demonstrate that no violations of the VCPA or VHSSA had occurred, or, in the alternative, to execute an appropriate Assurance of Voluntary Compliance ("AVC") that is acceptable to the Commonwealth. The Defendant agreed to execute an AVC that is acceptable to the Commonwealth.

### **PARTIES**

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

6. The Defendant, Capital Meats, Inc., is a Virginia corporation having its principal office at 351 North Maple Avenue, Martinsburg, West Virginia, 25402. CMI previously was headquartered in Stephens City, Virginia (Frederick County).

### **FACTS**

7. CMI is a Virginia corporation that operates as an online and door-to-door seller of

wholesale meat products to consumers in Virginia, among other locations.

8. The Office received five consumer complaints against CMI in 2015. All consumers noted problems with the quantity of the product, quality of the product, and difficulty with CMI's refund process.

9. CMI has distribution centers, where the wholesale meat products are stored, located in Virginia, Maryland, Tennessee, and Colorado.

10. CMI serves as the supplier of wholesale meat products to independent salesmen known as Retail Dealers. The terms and conditions of the relationship between CMI and its Retail Dealers are detailed in a Distributorship Agreement between the parties.

11. Additionally, the Retail Dealer enters into an Equipment Lease Agreement with CMI which includes terms and conditions related to the Retail Dealer's use of a CMI delivery vehicle.

12. A Retail Dealer obtains wholesale meat products from one of the distribution centers to stock the CMI delivery vehicle. The Retail Dealer then offers the wholesale meat products to consumers through door-to-door solicitations within that Retail Dealer's distribution area.

13. On information and belief, Retail Dealers represented to consumers that the wholesale meat products offered by CMI were of a certain quantity or weight.

14. However, after purchasing the products, some consumers found that the products were not the weight or quantity stated by the Retail Dealer.

15. On information and belief, Retail Dealers represented to consumers that the wholesale meat products offered by CMI were good quality, non-processed products.

16. However, after purchasing the products, some consumers found that the products

were freezer-burned, full of fat, or, when consumed, tasted processed and of poor quality.

17. When consumers attempted to contact CMI regarding these quantity and quality misrepresentations, their concerns went unanswered, or, alternatively, it took several days for CMI to provide a substantive response.

18. Retail Dealers purchase sales receipts from CMI to provide to consumers. This sales receipt, provided to consumers at the time of purchase, required that notice of cancellation be sent via certified mail and received by CMI within three days of purchase. A copy of a sales receipt is attached as Exhibit A.

19. Section 59.1-21.3 does not permit a seller to require that a consumer's notice of cancellation be received by the seller within three business days of purchase; rather it must be mailed within three business days of purchase.

20. Section 59.1-21.3 does not permit a seller to require that a consumer's notice of cancellation be sent via certified mail.

21. The statement of buyer's rights and notice of cancellation on the sales receipt was not conspicuously captioned and in ten-point bold-face type.

### **CAUSES OF ACTION**

#### **COUNT 1—VIRGINIA CONSUMER PROTECTION ACT**

22. The Plaintiff re-alleges and incorporates herein by reference all matters set forth in Paragraphs 1 through 21 above.

23. The Defendant is now, and was at all relevant times mentioned herein, a "supplier" of "goods" or "services" in connection with "consumer transaction[s]" as those terms are defined in § 59.1-198 of the VCPA.

24. By offering for sale wholesale meat products to consumers, the Defendant has and

does engage in “consumer transaction[s],” as defined in § 59.1-198 of the VCPA.

25. In making misrepresentations regarding the quantity and quality of the wholesale meat products offered to consumers, the Defendant has engaged in the following acts and practices, which are prohibited practices under the VCPA:

- a. Misrepresenting that goods or services have certain quantities, characteristics, ingredients, uses, or benefits, in violation of § 59.1-200(A)(5);
- b. Misrepresenting that goods or services are of a particular standard, quality, grade, style, or model, in violation of § 59.1-200(A)(6); and
- c. Using any other deception, fraud, false pretense, false promise, or misrepresentation in connection with a consumer transaction, in violation of § 59.1-200(A)(14).

26. Individual consumers have suffered losses as a result of the Defendant’s violations of § 59.1-200 (A)(5), (6), and (14) of the VCPA.

27. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VCPA.

### **COUNT 2- VIRGINIA HOME SOLICITATION SALES ACT**

28. The Commonwealth re-alleges and incorporates by reference the allegations of Paragraphs 1 through 27 above.

29. The Defendant is now, and was at all relevant times mentioned herein, a “seller” of “goods” in connection with “[h]ome solicitation sale[s]” as those terms are defined in § 59.1-21.2 of the VHSSA.

30. By operating door-to-door and offering for sale wholesale meat products to consumers who receive personal solicitations from agents of the Defendant, the Defendant has

and does engage in “[h]ome solicitation sale[s],” as defined in § 59.1-21.2 of the VHSSA.

31. In offering door-to-door wholesale meat product sales to consumers, and providing sales receipts to consumers that did not use bold-face ten-point type for the statement of buyer’s rights and notice of cancellation, and that also required that notice of cancellation be sent via certified mail and received by the seller within three days of purchase, the Defendant has engaged in the following acts and practices, which are prohibited by the VHSSA:

- a. Impermissibly requiring that the buyer send the notice of cancellation via certified mail, in violation of § 59.1-21.3;
- b. Impermissibly requiring that the seller receive the notice of cancellation within three business days, in violation of § 59.1-21.3; and
- c. Failing to provide the buyer with a VHSSA-compliant sales receipt containing a statement of the buyer’s rights and a notice of cancellation in bold-face ten-point type, in violation of § 59.1-21.4.

32. Individual consumers have suffered losses as a result of the Defendant’s violations of § 59.1-21.4 of the VHSSA.

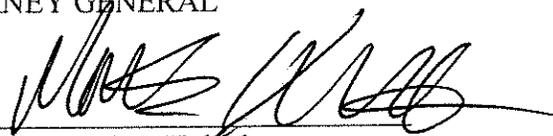
33. The Defendant has willfully engaged in the acts and practices described in this Complaint in violation of the VHSSA.

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiff, Commonwealth of Virginia, prays that this Court enter the Order Approving and Adopting Assurance of Voluntary Compliance filed herewith.

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

By: \_\_\_\_\_



Mark S. Kubiak

Mark R. Herring  
Attorney General

Cynthia E. Hudson  
Chief Deputy Attorney General

Rhodes B. Ritenour  
Deputy Attorney General  
Civil Litigation Division

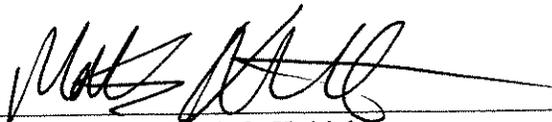
Richard S. Schweiker, Jr.  
Senior Assistant Attorney General and Chief

Mark S. Kubiak (VSB No. 73119)  
Assistant Attorney General

Consumer Protection Section  
202 North 9th Street  
Richmond, Virginia 23219  
Phone: (804) 786-7364  
Fax: (804) 786-0122

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of December, 2016, a true copy of the foregoing Complaint was mailed, postage prepaid, to John C. Trent, Esquire, Putbren, Hunsaker & Trent, P.C., 200 South Church Street, Woodstock, Virginia 22664, counsel for Defendant Capital Meats, Inc.



Mark S. Kubiak

# CAPITAL MEATS INCORPORATED



**Capital Meats, Inc.** [www.capitalmeats.com](http://www.capitalmeats.com) 23655

Date: [Redacted]

Customer Name: [Redacted] DL#: [Redacted]

Address: [Redacted]

City: [Redacted] State: [Redacted] Zip: [Redacted]

Email Address: [Redacted] Email Newsletter? Yes No

Phone: [Redacted] Work Phone: [Redacted]

Cash  Check # [Redacted]

Credit Card # [Redacted]

Exp. / / Billing Zip [Redacted]

EBT # [Redacted]

Driver Name/ID#: [Redacted]

Qty	Product	Amount
1	[Redacted]	[Redacted]
1	[Redacted]	[Redacted]
		Subtotal [Redacted]
		Tax [Redacted]
		TOTAL [Redacted]

**CUSTOMER SIGNATURE:** [Redacted]

Your independent distributor of Capital Meats, Inc. guarantees your purchase against freezer burn for 12 months from the date of this signed receipt. The entire unused portion must be returned in its original packaging for this guarantee to be valid. A written request for reshipped orders must be received by the corporate office within 3 (three) business days, (excluding Saturday and by 12:00 p.m. midnight of the third business day) of purchase by Certified Mail - pending cleared funds. Corporate Address: Post Office Box 1210 Stephens City, VA 22655. For customer service questions, contact us online or at 866-247-0020.

**Capital Meats, Inc.** [www.capitalmeats.com](http://www.capitalmeats.com) Date: [Redacted]

Customer Name: [Redacted] 361676

Address: [Redacted] DL#: [Redacted]

City: [Redacted] State: [Redacted] Zip: [Redacted]

Email Address: [Redacted] Email Newsletter? Yes No

Phone: [Redacted] Work Phone: [Redacted]

Cash  Check # [Redacted]

Credit Card # [Redacted]

Exp. / / Billing Zip [Redacted]

EBT # [Redacted]

Driver Name/ID#: [Redacted]

Qty	Product	Amount
1	Hot cats	[Redacted]
		Subtotal [Redacted]
		Tax [Redacted]
		TOTAL [Redacted]

**CUSTOMER SIGNATURE:** [Redacted]

Your independent distributor of Capital Meats, Inc. guarantees your purchase against freezer burn for 12 months from the date of this signed receipt. The entire unused portion must be returned in its original packaging for this guarantee to be valid. A written request for reshipped orders must be received by the corporate office within 3 (three) business days, (excluding Saturday and by 12:00 p.m. midnight of the third business day) of purchase by Certified Mail - pending cleared funds. Corporate Address: Post Office Box 1210 Stephens City, VA 22655. For customer service questions, contact us online or at 866-247-0020.

**CHECK US OUT ONLINE:** [www.customerfeedback.com](http://www.customerfeedback.com) - Leave your comments, take a short online survey, and receive a 10% OFF Coupon for your next order of Capital Meats products. (Not to be combined with any other offer.) Also, see how CMI is getting involved in the same communities we service at [www.capitalmeatscommunitynews.com](http://www.capitalmeatscommunitynews.com)

