

I. Background

1. On or about October 30, 2009, a voluntary Chapter 7 petition was filed by George Harold Christian (the "Debtor"). The Debtor is the sole shareholder and the sole director of Financing Alternatives, Inc., a Virginia corporation ("Financing Alternatives"). The Debtor also served as the president, chief executive officer, and/or chairman of Financing Alternatives and also claimed the title of "founder" of the same.

2. On or about July 23, 2007, the Commonwealth initiated a civil action in the Circuit Court of the City of Chesapeake against Financing Alternatives (the "Circuit Court Proceeding").

3. In the Circuit Court Proceeding, the Commonwealth alleged that Financing Alternatives engaged in activities constituting violations of the Virginia Consumer Protection Act (the "VCPA"), Virginia Code §§ 59.1-196 through 59.1-207, by, among other things, misrepresenting to consumers who contacted Financing Alternatives to purchase computers, the time period during which the computers would be ordered, shipped, or delivered; misrepresenting or failing to disclose to consumers all the conditions required by Financing Alternatives to be met before computers would be ordered, shipped or delivered; misrepresenting to consumers the reasons for delays in the ordering, shipment, or delivery of computers; and receiving all required payments, or full payment, from consumers for computers and then failing to order, ship, or deliver the computers.

4. The Commonwealth further alleged that Financing Alternatives offered computers and other goods for sale in the Commonwealth of Virginia and nationwide, targeting consumers with poor or bad credit in its advertising.

5. Consumers who contacted Financing Alternatives to purchase computers were led to believe that the computers would be shipped to them after they made three (3) months of payments to Financing Alternatives and that it would be necessary to continue making payments for an additional nine (9) months after the computers were shipped to them.

6. However, consumers often did not receive the computers within the specified time period. In many instances, after having paid in full for twelve (12) months, consumers still did not receive the computers.

7. As of August 2007, 1,765 consumers paid a total of \$3,281,604.00 to Financing Alternatives in full for computers that were never shipped to them. Many other consumers made the required payments to Financing Alternatives, although not yet paying in full, and did not receive the promised computers.

8. On or about October 5, 2007, the Chesapeake Circuit Court (the "Circuit Court") granted the Commonwealth's Motion for Temporary Injunction, Asset Freeze, and Appointment of Receiver. The Circuit Court entered a Temporary Injunction against Financing Alternatives that, among other things, enjoined certain unlawful conduct, froze its assets, and appointed a receiver.

9. On or about June 25, 2008, the Circuit Court entered an Order Extending the Temporary Injunction previously entered on October 5, 2007 until 5:00 p.m. on June 30, 2009. On or about May 20, 2009, the Circuit Court entered a Second Order Extending the Temporary Injunction until 5:00 p.m. on December 31, 2009.

10. On or about March 27, 2008, the Circuit Court entered an Order granting the Commonwealth's Motion for Leave to Amend its Complaint adding the Debtor as a defendant in the suit (the "Amended Complaint").

11. The Commonwealth alleged in its Amended Complaint that Financing Alternatives engaged in activities constituting violations of the VCPA; that the Debtor is personally liable for Financing Alternatives' violations of the VCPA based upon his active participation in the wrongful acts of Financing Alternatives; that the Debtor is personally liable for Financing Alternatives' violations of the VCPA by piercing the corporate veil of Financing Alternatives; that the Debtor engaged in activities constituting violations of the Virginia Stock Corporation Act (the "VSCA"), Virginia Code §§ 13.1-601 through 13.1-781, and is personally liable for such violations pursuant to Virginia Code § 13.1-692; and that the Debtor directed unlawful and excessive shareholder distributions to be made to himself in violation of Virginia Code § 13.1-653 of the VSCA.

12. The Commonwealth initiated the Circuit Court Proceeding pursuant to Virginia Code § 59.1-203 (A), which authorizes the Attorney General to bring an action on behalf of the Commonwealth to enjoin a supplier from engaging in fraudulent acts or practices in violation of Virginia Code § 59.1-200.

13. As relief, the Commonwealth requested the Circuit Court to preliminarily and permanently enjoin Financing Alternatives and the Debtor from violating § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-203; to grant judgment against Financing Alternatives and the Debtor, jointly and severally, and award to the Commonwealth all sums necessary to restore to any consumers the money or property acquired from them by Financing Alternatives in connection with violations of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-205; to enter any additional orders or decrees as may be necessary to restore to any consumers the money or property acquired from them by Financing Alternatives in connection with violations of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-205; to grant judgment against

Financing Alternatives and the Debtor, jointly and severally, and award to the Commonwealth civil penalties of up to \$2,500.00 per violation for each willful violation of § 59.1-200 of the VCPA pursuant to Virginia Code § 59.1-206 (A), with the exact number of violations to be proven at trial; to grant judgment against Financing Alternatives and the Debtor, jointly and severally, and award to the Commonwealth its costs, reasonable expenses incurred in investigating and preparing the case up to \$1,000.00 per violation of § 59.1-200 of the VCPA, and attorney's fees pursuant to Virginia Code § 59.1-206 (C); to grant judgment against the Debtor and award to the Commonwealth the sum of \$7,148,319.22 for unlawful distributions made in violation of § 13.1-653 of the VSCA pursuant to Virginia Code § 13.1-692; and to grant such other and further relief determined to be just and proper.

14. A trial is scheduled to be held in the Circuit Court Proceeding on November 5, 2009.

15. Since the initiation of the Circuit Court Proceeding, the Debtor has filed scores of pleadings with the Circuit Court in an effort to evade, delay, preempt, short-circuit, and otherwise thwart the Circuit Court Proceeding as well as separate actions in the Circuit Court of the City of Richmond (the "Richmond Circuit Court") based upon an alleged "facial challenge" to the Virginia court system's lack of compliance with the Americans with Disabilities Act and the United States District Court for the Eastern District of Virginia, Norfolk Division (the "District Court") to enjoin the Circuit Court Proceeding. The action filed in the Richmond Circuit Court was non-suited by the Debtor and an Order was entered by the Richmond Circuit Court on October 13, 2009. As for the actions filed in the U.S. District Court, the first action was dismissed by an Opinion and Order dated October 10, 2008, and the second action dismissed by Order dated February 24, 2009, in which the District Court opined that the action bordered on

being frivolous. Attached as **Exhibit A** is a copy of the Order dismissing the second U.S. District Court action.

16. The Debtor's filing of the voluntary Chapter 7 petition is his latest dilatory tactic aimed at thwarting, on the eve of trial, the Circuit Court Proceeding currently pending against him and Financing Alternatives.

II. Argument

- a. **The Circuit Court Proceeding is exempt from the automatic stay imposed by 11 U.S.C. § 362(a) based upon the police and regulatory powers exception of 11 U.S.C. § 362(b)(4).**

17. Section 362(a)(1) of the Bankruptcy Code imposes an automatic stay on the commencement or continuation of a judicial, administrative, or other action or proceeding, including recovery of a claim, against a debtor that was or could have been commenced before the filing of a petition in bankruptcy. 11 U.S.C. § 362(a)(1). However, among the exceptions, Section 362(b)(4) of the Bankruptcy Code excludes from the automatic stay the commencement or continuation of an action or proceeding by a governmental unit to enforce the governmental unit's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's police or regulatory power. 11 U.S.C. § 362(b)(4).

18. The meaning of the police and regulatory powers exception is explained by its legislative history.

Paragraph (4) excepts commencement or continuation of actions and proceedings by governmental units to enforce police or regulatory powers. Thus, where a governmental unit is suing a debtor to prevent or stop violation of *fraud*, environmental protection, *consumer protection*, safety, or similar police or regulatory laws, or *attempting to fix damages for violation of such a law*, the action or proceeding is not stayed under the automatic stay.

Paragraph (5) makes clear that the exception extends to permit an injunction and enforcement of an injunction, and to permit the entry of a money judgment, but does not extend to permit enforcement of a money judgment.

Equal Employment Opportunity Commission v. McLean Trucking Company, 834 F.2d 398, 401 (4th Cir. 1987), citing H.R. Rep. No. 595, 95th Cong., 2nd Sess. 343 (1977), reprinted in 1978 U.S. Code Cong. and Admin. News 5963, 6299. (Emphasis added)

19. The policy reasoning behind the police and regulatory exception was explained by the Third Circuit when it commented that, “Congress recognized...that the stay provision was particularly vulnerable to abuse by debtors improperly seeking refuge under the stay in an effort to frustrate necessary governmental functions.” *United States v. Nicolet, Inc.*, 857 F.2d 202, 207 (3rd Cir. 1988) (citing *Commodity Futures Trading Comm’n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1283 (9th Cir. 1983)). The Ninth Circuit further explained the theory behind the police and regulatory exception by stating that “bankruptcy should not be “a haven for wrongdoers,” the automatic stay should not prevent governmental regulatory, police and criminal actions from proceeding.” *Universal Life Church, Inc. v. United States*, 128 F.3d 1294, 1297 (9th Cir. 1997) (citing 3 Collier on Bankruptcy ¶ 362.05 [5] [a], at 362-54 (15th ed. 1996)).

20. As police and regulatory power refers to enforcement of laws affecting health, welfare, morals and safety, courts have developed two tests for determining whether an agency’s actions fit within the Section 362(b)(4) exception: (1) the “pecuniary purpose” test and (2) the “public policy” test. 128 F.3d at 1297. Under the pecuniary purpose test, the court must determine whether the government action relates primarily to the protection of the government’s pecuniary interest in the debtor’s property or to matters of public safety and welfare. *Id.* The public policy test distinguishes between government actions that effectuate public policy as

opposed to adjudicating private rights. *Id.* If the Commonwealth meets either test, the Commonwealth's action is excepted from the automatic stay under Section 362(b)(4).

21. The Commonwealth initiated the Circuit Court Proceeding in the instant case pursuant to Virginia Code § 59.1-203 (A) which authorizes the Commonwealth to enjoin a supplier from engaging in fraudulent acts or practices in violation of Virginia Code § 59.1-200. In a similar case, the United States District Court of Maryland held that the United States Bankruptcy Court of the District of Maryland abused its discretion when it found that the Consumer Protection Division of the Maryland Office of Attorney General's attempt to obtain restitution for the consumers who relied upon and made qualifying purchases pursuant to Luskin's Inc., a retail seller of consumer electronic and household goods and services, ad campaign was solely an attempt to protect a pecuniary interest in Luskin's Inc. property for the benefit of Maryland consumers. *In re Luskin's Inc.*, 213 B.R. 107, 111 (D. Md. 1997). The United States District Court of Maryland determined that the Consumer Protection Division of the Maryland Office of Attorney General was entitled to have the automatic stay relating to its monetary claim exempt pursuant to Section 362(b)(4) and reversed the decision of the United States Bankruptcy Court of the District of Maryland. As in *In re Luskin's*, this Court should find that the Commonwealth's attempt to obtain refunds for affected consumers, as well as an injunction, civil penalties and attorney's fees, is not an attempt to solely protect a pecuniary interest in the Debtor's property, but rather fits plainly within the Section 362(b)(4) exception to the automatic stay.

22. Just as the Maryland Attorney General was in *In re Luskin's*, the Commonwealth is acting pursuant to statutory authority to punish and prevent future violations of the VCPA. The Commonwealth's Circuit Court Proceeding is a legitimate use of its police and regulatory

power as the Commonwealth is attempting to halt acts of consumer fraud and misrepresentation and implement the broader purpose of protecting the public interest. Clearly in this circumstance, the public policy test is met by the Commonwealth's efforts to halt the consumer fraud and misrepresentation perpetrated by the Debtor and Financing Alternatives. Thus, the Commonwealth's Circuit Court Proceeding satisfies both the pecuniary purpose test and the public policy test and accordingly is exempt from imposition of the automatic stay pursuant to 11 U.S.C. § 362(b)(4). See also *In re Iams Funeral Home, Inc. v. West Virginia ex rel. McGraw*, --- B.R. ---, 2008 WL 2704591 (N.D. W. Va. 2008).

b. In the alternative, the Circuit Court Proceeding is exempt from the automatic stay for cause pursuant to 11 U.S.C. 362(d)(1).

23. In the alternative, the Commonwealth's Circuit Court Proceeding is entitled to relief from the automatic stay for "cause" pursuant to 11 U.S.C. § 362(d)(1). Section 362(d)(1) of the Bankruptcy Code states that on the request of a party in interest, the court shall grant relief from the stay for cause, including, but not limited to, the lack of adequate protection of an interest in property of such party in interest. 11 U.S.C. § 362(d)(1). Courts have discretion to lift the stay and must determine the appropriateness of relief on a case by case basis.

Nationsbank, N.A. v. LDN Corp. (In re LDN Corp.), 191 B.R. 320, 323 (Bankr. E.D. Va. 1996).

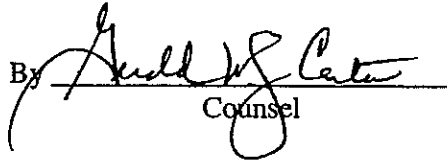
24. As the Bankruptcy Code does not define what constitutes "cause," the Fourth Circuit stated the factors a court should consider in deciding whether "cause" has been shown. In *In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992), the United States Court of Appeals for the Fourth Circuit stated that a bankruptcy court must balance potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied. The factors to be considered by a bankruptcy court include: (1) whether the issues in the pending litigation involve only state law, so the expertise of the

bankruptcy court is unnecessary; (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgment through the bankruptcy court. 964 F.2d at 345.

25. Applying the *Robbins* factors, this Court should grant the requested relief. Firstly, the issues involved in the Circuit Court Proceeding involve only state law, specifically the VCPA and the VSCA. Thus, the expertise of this Court is unwarranted. Secondly, a modification of the stay will promote judicial economy as the Circuit Court Proceeding was pending in the City of Chesapeake when the Debtor filed this bankruptcy case and the Commonwealth is prepared to put on its evidence in support thereof as the trial in the Circuit Court Proceeding is scheduled to begin on November 5, 2009. Furthermore, there will be greater interference with the bankruptcy case if the stay is not lifted because this matter will have to be litigated in this Court causing this Court to interpret Virginia law, review the case files, and hear evidence. Finally, the Debtor's estate or the interests of other creditors will not be harmed by the lifting of the automatic stay as the Circuit Court of the City of Chesapeake will determine the Debtor's liability under the VCPA and the VSCA, enjoin further violations of the VCPA and the VSCA, order refunds to affected consumers, and impose penalties for violations of the VCPA and the VSCA. However, this Court will retain jurisdiction to subsequently determine the enforcement of the judgment against the estate. Therefore, in considering the *Robbins* factors, the Commonwealth is entitled to relief from the automatic stay to continue its Circuit Court Proceeding against the Debtor for "cause" under 11 U.S.C. § 362(d)(1).

WHEREFORE, for the foregoing reasons, the Commonwealth respectfully requests that this Court enter an Order: (i) determining that continuation of the Circuit Court Proceeding by the Circuit Court of the City of Chesapeake is exempt from the automatic stay pursuant to 11 U.S.C. § 362(b)(4) or in the alternative, that cause exists for relief from the automatic stay; and (ii) for such other and further relief as the Court deems just and appropriate.

**COMMONWEALTH OF VIRGINIA,
ex rel. WILLIAM C. MIMS,
ATTORNEY GENERAL**

By 
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NOTICE OF MOTION

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one.)

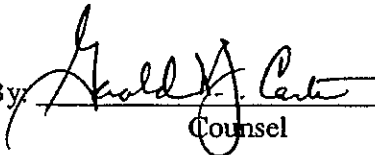
If you do not wish the Court to grant the relief sought in this motion, or if you want the Court to consider your views on the motion, then within fifteen (15) days from the date of service of this motion, you must file a written response explaining your position with the Court at the following address: **Clerk of Court, United States Bankruptcy Court, 600 Granby Street, Room 400, Norfolk, Virginia, 23510-1915**, and serve a copy on the movant's attorney at the address shown below. Unless a written response is filed and served within this fifteen (15) day period, the Court may deem opposition waived, treat the motion as conceded, and issue an order granting the requested relief.

If you mail your response to the Court for filing, you must mail it early enough so that the Court will receive it on or before the expiration of the fifteen (15) day period.

If you or your attorney do not take these steps, the Court may decide that you do not oppose the relief sought in the motion and may enter an order granting that relief.

**COMMONWEALTH OF VIRGINIA,
ex rel. WILLIAM C. MIMS,
ATTORNEY GENERAL**

Date: November 4, 2009

By: 
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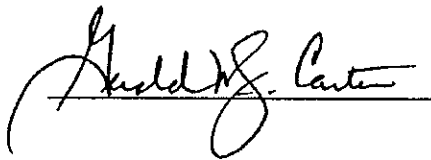
Counsels for the Commonwealth of Virginia, et. al.

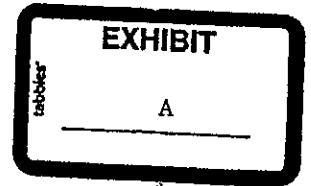
CERTIFICATE OF SERVICE

On November 4, 2009, I hereby certify that I have sent by overnight mail, postage prepaid, a copy of this Motion for Exemption from the Automatic Stay pursuant to 11 U.S.C. § 362(b)(4), or in the Alternative, for Relief from the Automatic Stay for Cause pursuant to 11 U.S.C. § 362(d)(1) and Notice of Motion upon each party required to receive notice under Local Bankruptcy Rule 4001(a)-(1)(F)(1) as follows:

George Harold Christian
1317 Avonlea Court
Chesapeake, Virginia 23322

Charles L. Marcus
Crown Center, Suite 300
580 East Main Street
Norfolk, Virginia 23510

A handwritten signature in black ink, appearing to read "George Harold Christian", written over a horizontal line.



UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED
FEB 24 2009
CLERK, U.S. DISTRICT COURT
NORFOLK, VA

FINANCING ALTERNATIVES INCORPORATED
SHAREHOLDER GEORGE H. CHRISTIAN,

Plaintiff,

v.

Civil Action No. 2:09cv70

COMMONWEALTH OF VIRGINIA,
EX REL. ROBERT F. McDONNELL,
ATTORNEY GENERAL,

Defendant.

ORDER

Currently before the court is a petition (1) for a preliminary injunction against the Circuit Court for the City of Chesapeake, Virginia ("Chesapeake Circuit Court") and (2) to compel binding arbitration, filed by *pro se* plaintiff George H. Christian, purportedly in his capacity as a shareholder of Financing Alternatives, Incorporated. Plaintiff's petition also requested a temporary restraining order against the Chesapeake Circuit Court, which U.S. District Judge Mark S. Davis dismissed without prejudice by Order dated February 20, 2009 for failure to comply with the requirements of Rule 65(b) of the Federal Rules of Civil Procedure. Although plaintiff requests a hearing and oral argument on the instant petition, after examination of the petition, this court has determined that oral argument is unnecessary, as the facts and legal arguments—such as they are—are adequately presented, and the decisional process would not be aided significantly by oral argument. Accordingly, the court DENIES plaintiff's request for oral argument. For the reasons stated herein, the court also DENIES and DISMISSES plaintiff's petition.

This is not the first time that plaintiff has sought to involve this court in his attempts to evade, delay, preempt, short-circuit, and otherwise thwart the civil enforcement action currently pending against him and his company in the Chesapeake Circuit Court, which is styled Commonwealth of Virginia ex rel. Robert F. McDonnell, Attorney General v. Financing Alternatives, Incorporated and George H. Christian, Case No. CL 07-2051 (Va. Cir. Ct.) (the "state litigation"). In the state litigation, the Commonwealth of Virginia (the "Commonwealth") alleges that Mr. Christian and his company defrauded customers of millions of dollars, in violation of the Virginia Consumer Protection Act of 1977, Va. Code Ann. §§ 59.1-196-59.1-207 (2008). That case, as well as the extensive factual and procedural history of plaintiff's earlier lawsuit before this court in connection with it, are discussed at length in this court's October 10, 2008 Opinion and Order dismissing the federal litigation. See Christian v. Commonwealth of Va., Civil Action No. 2:08cv276, slip op. (E.D. Va. Oct. 10, 2008) ("Opinion and Order"). In that case, this court determined, *inter alia*, that abstention pursuant to the U.S. Supreme Court's decision in Younger v. Harris, 401 U.S. 37 (1971), as extended by its subsequent decisions in Huffman v. Pursue, Ltd., 420 U.S. 592 (1975) and Trainor v. Hernandez, 431 U.S. 434 (1977), was appropriate. This court further indicated therein that it had "no intention of delaying or interposing itself unnecessarily in the state litigation" in the Chesapeake Circuit Court. See Opinion and Order at 12. Plaintiff did not appeal or otherwise challenge this court's dismissal of his earlier federal case.

This court still has no intention of interfering unnecessarily with the ongoing enforcement proceedings against plaintiff and his company in the Chesapeake Circuit Court. However, the court need not even reach the question of the propriety of such interference pursuant to plaintiff's

instant petitions. Plaintiff requests that this court issue "a preliminary injunction against further proceedings in the Chesapeake Circuit Court." Financing Alternatives, Incorporated Shareholder Christian's Memorandum of Law in Support of His Petition for *Ex Parte* Temporary Restraining Order, Petition for Preliminary Injunction, and Petition to Compel Binding Arbitration ("Mot. Mem.") at 2. Plaintiff claims that the basis for this extraordinary request, which clearly would implicate federalism concerns, is that his "right to compel arbitration" under the Federal Arbitration Act, 9 U.S.C. §§ 1-16, may be compromised by further proceedings in the state litigation. Mot. Mem. at 2.

The insufficiency (indeed, the near-frivolity) of plaintiff's argument in support of the instant petition is apparent even upon a cursory review of his brief. Plaintiff apparently believes that, because his company "and its customers [allegedly] agreed that all disputes are to be resolved by the National Arbitration Forum" (Mot. Mem. at 1), the Commonwealth is somehow precluded from enforcing its consumer protection laws against him in state court, and the proceedings in the state litigation must be stayed pending arbitration of the Commonwealth's claims against him and his company. This argument can be disposed of in short order, without even delving into the intricacies of federal arbitration law, preemption, or the contours of the strong federal policy in favor of alternative dispute resolution. Purely as a matter of elementary contract law, a contract's provisions—including, for example, arbitration clauses in sales contracts—cannot be construed to bind a non-party to the contract. Plaintiff nowhere suggests or even hints at the existence of any arbitration agreement or other contract containing an arbitration clause between the Commonwealth and him or his company that would even arguably cover the statutory violation alleged by the Commonwealth in the state litigation. Consequently, there

appears to be no agreement that could compel the Commonwealth to arbitrate anything with plaintiff or his company.

With regard to plaintiff's reference to alleged agreements with his company's customers to arbitrate disputes, plaintiff nowhere makes any argument that the Commonwealth, by virtue of its civil enforcement action or otherwise, somehow stands in the shoes of his company's customers, such that it would be bound by the provisions of any such agreements between them and plaintiff or his company. As plaintiff is doubtless aware, the state litigation against him and his company is not a class action brought by consumers, but rather an action by the Commonwealth for a violation of one of its statutes.¹

The U.S. Supreme Court and other courts have, of course, held in the past that private parties may contractually agree to arbitrate controversies arising amongst themselves premised on statutory private rights of action. See, e.g., Gilmer v. Interstate/Johnson Lane Corp., 500 U.S. 20 (1991) (holding private claims arising from the Age Discrimination in Employment Act of 1967 to be arbitrable); Rodriguez de Quijas v. Shearson/Am. Express, Inc., 490 U.S. 477 (1989) (same with regard to private claims under the Securities Act of 1933); Shearson/Am. Express, Inc. v. McMahon, 482 U.S. 220 (1987) (same with regard to private claims under the Securities Exchange Act of 1934 and the Racketeer Influenced and Corrupt Organizations Act); Mitsubishi

¹ The court also notes in this connection that plaintiff does not claim that the Commonwealth's state litigation against him implicates section 59.1-204 of the Virginia Code, which provides a private right of action to persons injured by violations of the statute. Va. Code Ann. § 59.1-204 (2008). Instead, it appears that the state litigation was, in fact, brought by the Commonwealth pursuant to sections 59.1-203 and 59.1-205 of the Virginia Code, which provide for the institution of actions by state and local government attorneys to enjoin violations of the statute and provide for court-ordered restitution to identifiable persons injured by such violations, respectively. Va. Code Ann. §§ 59.1-203, 59.1-205 (2008).

Motors Corp. v. Soler Chrysler-Plymouth, Inc., 473 U.S. 614 (1985) (same with regard to private antitrust claims under the Sherman Act); Bird v. Shearson Lehman/Am. Express, Inc., 926 F.2d 116 (2d Cir. 1991) (same with regard to claims under the Employee Retirement Income Security Act). In such situations, parties to the contract can effectively waive their right to bring such claims before a federal court under 28 U.S.C. § 1331 in favor of an arbitral forum. See Matsushita Elec. Indus. Co., Ltd. v. Epstein, 516 U.S. 367, 384–85 (1996) (explaining that “a statute conferring exclusive federal jurisdiction for a certain class of claims does not necessarily require resolution of those claims in a federal court” and “even when exclusively federal claims are at stake, there is no ‘universal right to litigate a federal claim in a federal district court’”) (quoting Allen v. McCurry, 449 U.S. 90, 105 (1980)). However, it neither follows from this nor comports with common sense that private parties, merely by contracting amongst themselves, would be able to “opt out” of compliance with applicable federal, state, or local laws or preclude a non-contracting governmental entity from enforcing such laws against them.²

Since the foregoing analysis has shown that the right upon which plaintiff bases his petition for a preliminary injunction and allegation of irreparable injury—namely, the right to force the Commonwealth to arbitrate its consumer protection law claims against him and his company absent any agreement between them to do so—to be non-existent, the court need not engage in further analysis of plaintiff’s petition for a preliminary injunction against further proceedings in the Chesapeake Circuit Court.


² Of course, the court recognizes that governmental entities *themselves* can enter into agreements that *de facto* have such an effect vis-a-vis private parties (*e.g.*, plea agreements, non-prosecution or deferred prosecution agreements, civil settlements, voluntary dismissals, or consent judgments). However, as previously noted, here there does not appear to be any such agreement between the Commonwealth and plaintiff or his company.

For the foregoing reasons, plaintiff's petition for a preliminary injunction and to compel binding arbitration is **DENIED**, and this matter is **DISMISSED**.

The plaintiff is **ADVISED** that he may appeal from this final Order by forwarding a written notice of appeal to the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510. Said written notice must be received by the Clerk within thirty (30) days from the date of this Order.

The Clerk is **REQUESTED** to send copies of this Order to the *pro se* plaintiff and to defendant. This court is also sending by facsimile a copy of this Order to the Honorable Randall Smith of the Chesapeake Circuit Court.

It is so **ORDERED**.

1st 

Jerome B. Friedman
UNITED STATES DISTRICT JUDGE

February 24, 2009
Norfolk, Virginia