

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STATE OF OHIO, ex rel.
THOMAS R. WINTERS
FIRST ASSISTANT ATTORNEY GENERAL)
30 East Broad Street, 14th Floor
Columbus, OH 43215-3400

CASE NO.

08CVH 5 7 2 34

Plaintiff,

JUDGE:

v.

CAPITAL PAYMENT SYSTEMS, LLC.
1790 N. Lee Trevino Drive
Suite 504
El Paso, Texas 79936

COMPLAINT AND REQUEST
FOR INJUNCTIVE AND
DECLARATORY RELIEF,
CONSUMER RESTITUTION,
CIVIL PENALTIES AND COSTS

And

BANCTECH PROCESSORS, INC.
1790 N. Lee Trevino Drive
Suite 504
El Paso, Texas 79936

And

ELECTRONIC CHECK CORPORATION
1790 N. Lee Trevino Drive
Suite 504
El Paso, Texas 79936

And

BRUCE C. WOODS, Individually
12282 Eagle Heart Drive
El Paso, Texas 79936

And

ALI NAKHAI, Individually
11199 Av De Bois-De-Boulogne
Montreal, Quebec H3M 2X2
CANADA

Defendants.

FILED
COMMON PLEAS COURT
FRANKLIN CO., OHIO
2008 MAY 16 AM 11:27
CLERK OF COURTS-CV

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through the First Assistant Attorney General of Ohio, Thomas R. Winters, having reasonable cause to believe that violations of Ohio's consumer laws have occurred, brings this action in the public interest and on behalf of the State of Ohio under the authority vested in him by the Ohio Consumer Sales Practices Act (hereinafter, "CSPA"), R.C. 1345.01 et seq. and R.C. 109.87. Plaintiff seeks injunctive and declaratory relief, consumer restitution, civil penalties, attorney fees, costs, and other appropriate relief.

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, Franklin County, and other Ohio counties, and as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq. and R.C. 109.87.

3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1354.04 of the CSPA and R.C. 109.87(D)(1).

4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(1)-(3), in that many of the transactions complained of herein, and out of which this action arose, occurred in Franklin County.

DEFENDANTS

5. Defendant Capital Payment Systems, LLC., (hereinafter, "CPS"), is a limited liability company registered with the Delaware Secretary of State's Office. The principal office for CPS is located at 1790 N. Lee Trevino Drive, Suite 504, El Paso, Texas 79936.

6. Defendant BancTech Processors, Inc., (hereinafter, "BTS"), is a registered corporation with the Texas Secretary of State. The principal office for BTS is located at 1790 N. Lee Trevino Drive, Suite 504, El Paso, Texas 79936.

7. Defendant Electronic Check Corporation (hereinafter, "ECC") is a registered corporation with Texas Secretary of State. The principal office for ECC is located at 1790 N. Lee Trevino Drive, Suite 504, El Paso, Texas 79936

8. Defendants Capital Payment Systems, BancTech Processors and Electronic Check Corporation are not registered as foreign corporations with the Ohio Secretary of State pursuant to R.C. 1703.01.

9. Defendant Ali Nakhai (hereinafter, "Nakhai"), an individual, is the Managing Member of CPS. Nakhai is a Canadian citizen residing at 11199 Av De Bois-De-Boulogne, Montreal; Quebec Canada H3M 2X2.

10. Defendant Bruce Woods (hereinafter, "Woods"), an individual, is the General Manager of Defendant CPS, the President and Director of Defendant BTP and the)0(of Defendant Electronic Check Corporation.

11. At all relevant times, Defendants Ali Nakhai and Bruce Woods have had full dominion and control of Defendant CPS by controlling CPS's policies, procedures and client selection. Defendants Ali Nakhai and Bruce Woods have committed, allowed, directed, ratified or otherwise caused the unlawful acts and practices explained below to occur.

12. At all relevant times, Defendant Bruce Woods had full dominion and control of Defendant BTP and ECC by controlling the policies, procedures and client selection of Defendants BTP and ECC. Defendant Bruce Woods has committed, allowed, directed, ratified or otherwise caused the unlawful acts and practices explained below to occur.

13. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C), as Defendants were, at all relevant times, engaged in and/or effected consumer transactions by preparing and processing bank debits to consumer bank accounts on behalf of their clients. As "suppliers,"

Defendants effected consumer transactions for "individuals" in Franklin County and other counties in the State of Ohio and throughout the country that were primarily personal, family or household within the meaning specified in R.C. 13450.1(A) and (D).

BACKGROUND

A. The International Problem of Predatory Telemarketing Fraud

14. The Unites States Congress has estimated that telemarketing fraud costs Americans nearly \$40 billion every year.

15. Perpetrators of telemarketing fraud use the telephone to deprive victims of their money by using manipulation and misrepresentations to persuade victims to part with funds or other personal information with which the telemarketer accesses the victims' financial resources without authorization.

16. The telemarketing fraud industry is highly sophisticated and very mobile. They often use "boiler room" call centers which are equipped with a large number of telephone lines. They are often located in foreign countries such as, Canada, India and the West Indies.

17. In boiler room call centers, telemarketers are trained to identify likely victims. They are provided with sales scripts that filled with false promises, misleading information and high-pressure sales techniques.

18. Fraudulent telemarketers and their accomplices often trade in lists of prospective victims, including repeat victims who are likely to be victimized with additional schemes. Often those traded lists include not only the identity and contact information for victims, but also personal financial information such as bank or credit card account numbers.

19. Canada has been identified by the United States government as a country with substantial fraudulent telemarketing activity directed at victims in the United States. In 1997,

United States President Clinton and Canadian Prime Minister Chretien directed officials to examine ways to counter the serious and growing problem of Canada-United States telemarketing fraud. Montreal, Vancouver and Toronto were identified as Canadian cities with particularly active fraudulent telemarketing operations.

20. According to the National Consumer League's National Fraud Information Center, the top locations for fraudulent telemarketers in the first calendar quarter of 2005 are countries outside the United States, including Canada.

B. Payment Processors are Essential Participants in Telemarketing Fraud

21. According to the National Consumer League's National Fraud Information Center, bank debits were the second most common method of payment by victims to fraudulent telemarketers.

22. A telemarketer who obtains information on a victim's bank account can arrange to have that account debited, whether or not the victim actually agreed to have his or her account charged.

23. The success of telemarketing fraud, and in particular cross-border telemarketing fraud, is dependent upon entities known as third-party payment processors (hereinafter referred to as "payment processor") to facilitate the banking procedures by which money is taken from victims' bank accounts and transferred to the perpetrators of fraud.

24. The schemes require telemarketers, also known as merchants or originators, to contract with payment processors, like the Defendants, to collect and transmit money.

25. A payment processor establishes an account with a bank.. The telemarketer provides the payment processor with the consumers' bank account information and other information, such as the amount of the purported "sale."

26. The payment processors use the consumers' information to debit the consumers' account through one of two methods, a remotely created check (sometimes also known as a "demand draft") or an Automated Clearing House (hereinafter, "ACH") debit, (collectively referred to as "bank debits".)

27. An ACH debit refers to an electronic withdrawal of funds, without the use of any paper check, from a consumer's bank account. ACH transactions are subject to the interbank rules of the National Automated Clearing House Association (hereinafter, "NACHA"). Those rules prohibit processing ACH transactions on behalf of businesses engaged in outbound telemarketing calls to consumers with whom they have no existing business relationship. As a result of NACHA's prohibition on using ACH transaction with outbound telemarketing solicitations to persons with which they have no existing business relationship, many telemarketers have migrated to the use of remotely created checks to debit consumer accounts.

28. By contrast, a remotely created check ("RCC") is an unsigned paper check. In place of a signature, an RCC will state "Authorized by Account Holder," "Signature Not Required," or "This payment has been authorized by the above-named depositor and is guaranteed by the payee" or something similar. RCCs can be printed using readily available computer hardware and software and are handled (and optically scanned) by the banking system in the United States as normal personal checks.

29. Both ACH debits and demand drafts can be initiated using two pieces of information (other than the amount of the funds to be debited): the number of the drawee's bank account, and the routing number that identifies the bank where the account is located. These two numbers, sometimes referred to as the "MICR [Magnetic Ink Character Recognition] Code," appear at the bottom of regular bank checks.

30. The draft or debit is payable to the telemarketer, but is deposited into the bank account of the payment processor. Typically, a payment processor will then forward the funds received as a result of the bank transaction to the telemarketer, less a fee for the payment processor.

31. When a large number of bank debits—whether ACH or demand draft—are "returned" by account holders for a credit on similar transactions—that typically indicates a problem with the transactions between the merchant and its customer.

32. A bank draft or ACH debit "return" refers to a transaction refused or reversed by the payor's bank due to any number of reasons, such as the transaction was not authorized by the payor, invalid bank account number, insufficient funds in the payor's account, the account was closed, or other similar reasons. Return rates that deviate substantially from normative rates are often indicia of fraud. In many cases, high returns rates reflect a lack of payor authorization for bank drafts.

33. Specifically, a high "return rate" (the percentage of attempted debits that are returned out of the total number of attempted debits) for a specific merchant commonly indicates the lack of consumer authorization, either where the consumer never authorized the debit, or where the consumer authorized the debit, but the authorization is based on deceptive misrepresentations or omissions about the offer that is the subject of the transaction.

34. For ACH transactions, NACHA has rules that set forth more than sixty (60) different "return reason codes" that consumers' banks must use to classify the reason they are returning the ACH transactions. 2006 ACH Rules, pp. OR 92-98. For example, the current return code RIO stands for "consumer advises not authorized."

35. NACHA publishes on a quarterly basis detailed statistics on average return rates experienced by the ACH network as a whole ("industry average return rates"). These statistics include both the total return rates (the percentage of all ACH transactions that are returned out of the total number of attempted debits, regardless of the return reason provided by the consumers' banks), as well as return rates for specific return reasons (the percentage of ACH transactions that are returned for identified reasons under certain return codes, such as "R02"- "account closed", out of the total number of attempted debits.)

36. NACHA's statistics on industry average return rates include not only return rates for all ACH transactions (averaged across all type of ACH transactions), but also for certain specific types of ACH transactions, such as "PPD" transactions ("pre-arranged payment and deposit entry"), "WEB" transactions (Internet-initiated transactions), and "TEL" transactions (one-time telephone-initiated transactions to consumers with whom the merchant had an existing relationship). These detailed industry average return rates provide multiple baseline measures with which to compare and monitor merchant return rates.

37. For example, out of the four quarters in 2005, the highest quarterly industry average total return rate for all ACH debit transactions was 2.3 percent, for PPD transactions was 2.96 percent, and for WEB transactions was 1.95 percent. During that same time period, for the specific return code R10 (customer advises not authorized), the highest quarterly industry average return rate for all ACH transactions was 0.02 percent, for PPD transactions was 0.04 percent, and for WEB transactions was 0.07 percent. NACHA Risk Management News, Winter 2006, Volume 2, Issue 1; NACHA Risk Management News, December 2005, Volume 1, Issue 6.

38. NACHA rules and guidelines emphasize the responsibility of all ACH participants, including payment processors such as the Defendants, to monitor merchant return rates and other suspicious activity to detect and prevent fraud in the ACH Network.

39. In contrast to ACH transactions, there is no entity within the banking industry, such as NACHA, that collects industry average return rates for RCCs. RCCs are not coded or tracked separately from regular bank checks through the check-clearing system.

40. However, with respect to bank checks (which include RCCs and other types of checks), the Federal Reserve Board has published a Payment Study, in which it estimates that the average rate for checks returned as uncollected in the United States is one-half of one percent. See Federal Reserve Bank, *Trends in the use of Payment Instruments in the United States* (2005) at 194, A. 112¹.

41. Unlike in the ACH network, in the check-clearing system, there are no industry average return rate statistics available for specific return reasons, such as "unauthorized" or "invalid" account numbers. Also unlike the ACH network, the return of checks (including both RCCs and other types of checks) is not subject to a uniform national body of rules governing the classifications employed by different banks to characterize the return reasons for checks. Some of the return reason classifications used for checks are similar to those used by the ACH Network, while others are not.

Available at <http://www.federalreserve.gov/pubs/bulletin/2005/spring05payment.pdf>.

42. Despite the absence of a uniform classification system used by banks to characterize the return reason for bank checks (which includes RCCs), banks and payment processors can monitor merchant return rates and other signs of suspicious activity to detect and prevent fraud through the banking system. For example, they can monitor the total return rates of their clients' RCC transactions, analyze the percentage of returned RCCs that are returned for specific reasons, compare their clients' return rates to industry average return rates for other existing comparable payment mechanisms, and watch closely for other signs of suspicious or fraudulent merchant activity.

43. *The Bank Secrecy Act/Anti-Money Laundering Examination Manual* (2006), published by the Federal Reserve and Office of the Controller of the Currency, includes an entire chapter devoted to "Third Party Payment Processors." It highlights return rates as a key indicator of illicit transactions by third party payment processors.

FACTS

Processing by CPS, BTP and ECC

44. Many, if not all, of the Defendants' telemarketing clients are "telephone solicitors" as each client is a "person" that engages in "telephone solicitation" directly or through one or more "salespersons" either from a location in this state, or from a location outside this state to persons in this state, as those terms are defined in R.C. 4719.01.

45. At all times relevant to this lawsuit, Defendants acted as payment processors that took MICR Code and related data from its clients, in electronic file format and processed bank debits so that the clients' customers would have money debited from their bank accounts.

46. From approximately January of 2006 through April of 2007, Defendants CPS, Ali Nakhai and Bruce Woods processed over 3,000 payments from the bank accounts of Ohio consumers resulting transactions totaling over \$1,034,229.00

47. From approximately November of 2006 through June of 2007, Defendants BTP and Bruce Woods processed over 190 payments from the bank accounts of Ohio consumers resulting in transactions totaling over \$62,000.

48. Defendants CPS, Bruce Woods and Ali Nakhai directly or indirectly maintained, accounts with financial institutions located in the United States through which they provided payment processing services to their telemarketing clients. Those financial institutions included Fifth Third Bank and Bank of Texas.

49. Defendants BTP, ECC and Bruce Woods directly or indirectly maintained merchant accounts with financial institutions located in the United States through which they provided payment processing services to their telemarketing clients. Those financial institutions included Inter National Bank, City Bank of Texas, Bank of Kentucky, and Bank of Texas.

50. Defendants' clients obtained the MICR Code from consumers, sometimes legitimately, sometimes by deception or without authorization, and transmitted that data in batches to Defendants, for the purpose of initiating debits from the consumers' bank accounts.

51. Defendants provided their telemarketing clients payment processing services which grant the telemarketers instantaneous access to consumers' bank accounts, from which withdrawals of hundreds of dollars at a time are made, often without the consumer's authorization and sometimes without the consumer's realization. Even when the withdrawal

is authorized by the consumer, the authorization is typically induced by a misleading sales pitch.

52. Defendants exercised limited due diligence in screening and selecting the companies on whose behalf it processed bank debits.

53. Many of the Defendants' clients were telemarketers whose methods of doing business raised serious questions of legality.

54. Defendants retain as payment for services a portion of the money it receives in connection with fraudulent telemarketing schemes.

55. Many of Defendants' client telemarketers were located in Montreal, a city known to be a particularly active area for telemarketing fraud perpetrators.

56. Typically, when a telemarketer applied to the Defendants for payment processing services, they provided copies of the telemarketers' sales script and/or verification scripts. In many cases, Defendants agreed to process payments for merchants who submitted sales and verification scripts that contained inconsistent or contradictory representations about the product or service marketed or illustrated deceptive sales techniques.

57. Defendants were in the possession of sales scripts purportedly used by some of their telemarketing clients that violated the Federal Telemarketing Sales Rule in that they failed to disclose truthfully, in a clear and conspicuous manner, the identity of the seller, nature of the goods or services, any material limitations or restrictions of use for the goods or services and the seller's refund policy.

58. Defendants were in the possession of sales scripts purportedly used by some of their telemarketing clients that contained violations the Federal Telemarketing Sales Rule in

that they misrepresented material aspects of the performance, nature or characteristics of the goods or services they proposed to sell.

59. Defendant CPS, Ali Nakhai and Bruce Woods were in possession of sales scripts containing the following offers::

- *Woldram & Hart, LTD, doing business as Protect First USA*:: This company purports to be selling a Privacy Program that "makes the process of stopping all unwanted telemarketing calls very simple...All you have to do is fill out and sign the forms you will be receiving and mail it back to the return address . This help will remove your name from the lists telemarketing companies use to contact you". The scripts also indicate that the company provides an Identity Theft Program which includes a "full year of protection against Identity Theft with a \$25,000 insurance against losses". No company can stop all unwanted telemarketing calls nor is this company authorized to sell insurance products in the State of Ohio. The script provides little to no information about the actual product or service being offered before requesting the consumer's bank account information.
- *Platinum Key*: This script contained a misleading offer related to assistance with obtaining private or government grants. The script provides little to no information about the actual product or service being offered before requesting the consumer's bank account information.
- *Tiger Systems dba Trinity Alliance*: This script contained a misleading offer for a "free," "new complete computer system." After requesting payment information for a membership fee of \$299.00, the sales script indicates that the consumer would receive the package in 13-14 working days"... and that..."information on our interne services and your free computer systems will be included in your package." The later verification script discloses that "Your computer will consist of information on obtaining a free computer." The script provides little to no information about the actual product or service being offered before requesting the consumer's bank account information.
- *IPPS Inc. doing business as National Grant*: This sales script contained misleading offer informing consumers that they are being contacted because "their name has come up o a list of individuals who quality for a new Federal government grant of up to \$25,000...and that [they] are eligible for a minimum of \$8,000 in Federal grant money" for a "one-time service fee of \$279 to cover costs because as you know, lawyers don't work for free." The script provides little to no information about the actual product or service being offered before requesting the consumer's bank account information.

60. Defendant BTP, ECC and Bruce Woods were in possession of a sales script containing the following offers:

- *9107-4021 Quebec Inc., doing business as Debt Negate Solutions Group:* This script contained a misleading offer that guarantees the healthy recovery of [consumers] financial situation and to negotiate down debt with creditors for a one-time registration fee of \$459" but [the consumer shouldn't] worry as this cost will be absorbed by your future savings." No service can guarantee to restore a healthy financial situation or that the fee will be absorbed into future savings on current debts.
- *9107-4021 Quebec, Inc., doing business as Med Provisions:* This sales script contains a misleading offer for a membership that indicates that consumers "will be saving on average between 30-50% on prescription medication costs as compared to retail prices in the U.S." The sales script provides no information as to how long the "membership" is valid or describe any limitations on the membership before requesting the consumer's checking account information to process a payment for \$389.00.

61. Defendants also processed payment for clients while having little or no information from the telemarketing company regarding the goods or services they purportedly offered to consumers.

62. The debits that Defendants processed were authorized, if at all, verbally over the telephone to the telemarketer.

63. Some of the debits processed by Defendants on behalf of telemarketer-clients were not authorized by the consumers whose bank accounts were charged.

64. Return rates for some of the telemarketer-clients on whose behalf Defendants processed debits were extraordinarily high, reflecting the likelihood of lack of authorization in many cases.

65. Defendants CPS, Bruce Woods and Ali Nakhai processed for approximately seventy-three telemarketing clients whose total return rates ranged from 19.8 percent to 68.28 percent.

66. Defendants BTP, ECC and Bruce Woods processed for approximately nine telemarketing clients whose total return rates ranged from 44.58 percent to 81.01 percent.

67. Despite the high return rates and scripts containing misrepresentations and other violations of law, Defendants continued to provide processing services for the telemarketers in question. In fact, Defendants assessed additional fees to their telemarketing clients for every returned bank debit which resulted in additional profits for Defendants.

68. In some cases, Defendants processed multiple drafts to the same consumers' accounts on behalf of the same telemarketer despite the fact that previous drafts were returned as "unauthorized" or similar reasons.

69. Some of the bank debits processed by Defendants were based upon outbound telemarketing calls to consumers whose telephone numbers were listed on the "Do Not Call" registry maintained by the Federal Trade Commission and with whom the telemarketer did not have an established business relationship.

70. Defendants processed bank debits to Ohio consumers' bank accounts of behalf of telephone solicitors who were not properly registered with the Ohio Attorney General's Office pursuant to the requirements of the Ohio Telephone Solicitation Sales Act, R.C. 4719.02(A).

71. Defendants processed bank debits to Ohio consumers' bank accounts of behalf of telephone solicitors or businesses entities who were not properly registered with the Ohio Secretary of State's Office to do business in the State of Ohio.

72. Defendants BTP and Bruce Wood processed for client telemarketer, 9107-4021 Quebec , Inc., doing business as Med Provisions (see paragraph 57 herein for an excerpt from their sales script) which was sued by the Federal Trade Commission on April 21, 2008 for

violations of the Telemarketing Act, 15 U.S.C. Section 6101-6108 and the Telemarketing Sales Rule 16 C.F.R. Part 310. FTC v. 9107-4021 Quebec, Inc., et al. Case No. 1:08CV1051.

73. Defendants BTP and Bruce Wood processed for client telemarketer, 6554962 Canada Inc., doing business as Union Consumer Benefits which was sued by the Federal Trade Commission on April 23, 2008 for violations of the Telemarketing Act, 15 U.S.C. Section 6101-6108 and the Telemarketing Sales Rule 16 C.F.R. Part 310. FTC v. 6554962 et al. Case No. 1:08CV02309.

PLAINTIFF'S FIRST CAUSE OF ACTION:

VIOLATION OF R.C. 109.87 BY VIOLATING
THE FEDERAL TELEMARKETING SALES RULE
COUNT ONE:

ASSISTING AND FACILITATING DECEPTIVE TELEMARKETING
ACTS OR PRACTICES

74. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Seventy Three (1-73) of this complaint.

75. Defendants committed unfair or deceptive acts or practices in violation of R.C. 109.87 and the CSPA, R.C. 1345.02(A), by providing substantial assistance or support to any seller or telemarketer when the Defendants knew or consciously avoided knowing that the seller or telemarketer was engaged in acts or practices that violate the Telemarketing Sales Rule, 16 C.F.R. Part 310.3(a)(c)(d) or 310.4.

76. Ohio courts have ruled that "suppliers", per R.C. 1345.01(C), are anyone effecting a consumer transaction at any point before, after, or during a consumer transaction. They have also ruled that effecting a consumer transaction that violates the CSPA, even without direct contact with the affected consumer, constitutes an unfair or deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

PLAINTIFF'S SECOND CAUSE OF ACTION:

VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE:

PROCESSING BANK DEBITS ON BEHALF OF TELEPHONE SOLICITORS
WHO ARE NOT REGISTERED AND BONDED

77. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Seventy Three (1-73) of this complaint.

78. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by processing bank debits to Ohio consumers' bank accounts on behalf of telemarketers who were not properly registered with the Ohio Attorney General's Office and bonded as required pursuant to the Ohio Telephone Solicitation Sales Act, R.C. 4719.02(A) and 4719.04(A).

79. Ohio courts have ruled that "suppliers", per R.C. 1345.01(C), are anyone effecting a consumer transaction at any point before, after, or during a consumer transaction. They have also ruled that effecting a consumer transaction that violates the CSPA, even without direct contact with the affected consumer, constitutes an unfair or deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

COUNT TWO:

PROCESSING BANK DEBITS ON BEHALF OF TELEPHONE SOLICITORS
WHO DO NOT COMPLY WITH PROVISIONS OF THE TELEPHONE
SOLICITATION SALES ACT

80. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through Seventy Three (1-73) of this complaint.

81. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by processing bank debits to Ohio consumers' bank accounts on behalf

of telephone solicitors who did not provide proper disclosures during telephone solicitations as required pursuant to the Ohio Telephone Solicitation Sales Act, R.C. 4719.06.

82. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by processing bank debits to Ohio consumers' bank accounts on behalf of telephone solicitors who did not obtain written confirmations of the transactions or are exempt from the requirements to obtain written confirmations pursuant to the Ohio Telephone Solicitation Sales Act, R.C. 4719.07.

83. Ohio courts have ruled that "suppliers", per R.C. 1345.01(C), are anyone effecting a consumer transaction at any point before, after, or during a consumer transaction. They have also ruled that effecting a consumer transaction that violates the CSPA, even without direct contact with the affected consumer, constitutes an unfair or deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

84. Such acts and practices have previously been determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq., and such decisions have been made available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE:

PROCESSING BANK DEBITS THAT ARE UNAUTHORIZED
BY THE ACCOUNT HOLDER

85. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in Paragraphs One through through Seventy Three (1-73) of this complaint.

86. Defendants committed unfair and deceptive acts or practices in violation of the CSPA, R.C. 1345.02(A) by processing bank debits to Ohio consumers' bank accounts that are unauthorized by the account holders.

87. Ohio courts have ruled that "suppliers", per R.C. 1345.01(C), are anyone effecting a consumer transaction at any point before, after, or during a consumer transaction. They have also ruled that effecting a consumer transaction that violates the CSPA, even without direct contact with the affected consumer, constitutes an unfair or deceptive act or practice in violation of the CSPA, R.C. 1345.02(A).

PRAYER FOR RELIEF

WHEREFORE Plaintiff requests this Court to:

1. ISSLM a permanent injunction prohibiting Defendants, their agents, servants, representatives, salespersons, employees, successors or assigns, and all persons acting in concert and participation with them from engaging in any business activity or effecting any consumer transaction in, into, or from Ohio which violates R.C. 109.87 and the Ohio Consumer Sales Practices Act, R.C. 1345.02(A).

2. ISSUE a declaratory judgment that the Defendants' business practices alleged above are unfair or deceptive acts or practices in violation of R.C. 109.87 and the CSPA, R.C. 1345.02(A) in the manner described.

3. ORDER Defendants liable for full restitution to all consumers found to have been damaged by the Defendants' unfair or deceptive acts or practices.

4. ASSESS, FINE and IMPOSE upon each Defendant, a civil penalty of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) for each separate and appropriate violation described herein, pursuant to CSPA, R.C. 1345.07(D).

5. ASSESS, FINE and IMPOSE upon each Defendant, a civil penalty of Eleven Thousand and 00/100 Dollars (\$11,000.00) for each separate and appropriate violation described herein, pursuant to R.C. 109.87, 15 U.S.C. § 45(m)(1)(A) and 16 CFR Sec. 1.98.

6. GRANT the Ohio Attorney General his costs in bringing this action pursuant to CSPA, R.C. 1345.07(B).

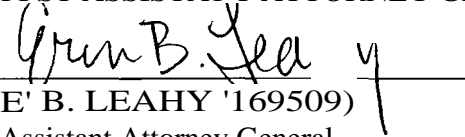
7. ORDER Defendant as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in its possession and control for a period of five (5) years all business records relating to Defendant's solicitation of services in Ohio, in a manner which prevents any risk of identity theft and complies with all privacy laws, and to permit the Ohio Attorney General or his representative, upon reasonable twenty-four (24) hour notice, to inspect and/or copy any and all records

8. GRANT such other relief as the Court deems to be just, equitable and appropriate.

9. ORDER Defendant obligated to pay all court costs.

Respectfully submitted,

THOMAS R. W TERS
FIRST ASSISTANT ATTORNEY GENERAL


E. B. LEAHY (169509)

Assistant Attorney General
Consumer Protection Section
30 E. Broad Street — 14th Fl.
Columbus, OH 43215
(614) 752-4730 (direct line)
(866) 768-2648 facsimile
ELeahy@ag.state.oh.us

Counsel for Plaintiff

JURY DEMAND

Plaintiff demands a jury trial pursuant to Civ. R. 38.

ALL'

E. B. LEAHY  _____
Assistant Attorney General