

FILED

IN THE COURT OF COMMON PLEAS OF CUYAHOGA COUNTY, OHIO

2012 OCT 24 A 10:28

STATE OF OHIO ex rel.
Ohio Attorney General Michael DeWine
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215

Plaintiff,

v.

AMERICAN HEARING CENTERS
NETWORK, LLC
d/b/a North American Hearing
6929 W. 130th Street, Suite #504
Parma Heights, Ohio 44130

and

SOUTHLAND HEARING CENTER
6929 W. 130th Street, Suite #504
Parma Heights, Ohio 44130

and

JOSEPH BOLES,
3942 Burgundy Bay Blvd. W.
Medina, Ohio 44256-8277

and

JEFFREY JONES,
29 N. Carpenter
Brunswick, Ohio 44212

Defendants.

THOMAS D. FLETCHER
CLERK OF COURTS
CUYAHOGA COUNTY

CASE NO.

JUD

Judge: ROBERT C MCCLELLAND

CV 12 794190

**COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF,
CONSUMER RESTITUTION, AND
CIVIL PENALTY**

JURISDICTION AND VENUE

1. Michael DeWine, Attorney General of Ohio, having reasonable cause to believe that violations of Ohio's consumer protection 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, R.C. 1345.01 et seq. (“CSPA”).

2. The actions of Defendants, hereinafter described, have occurred in the State of Ohio, Cuyahoga County and as set forth below are in violation of the CSPA, the Ohio Telephone Solicitation Sales Act, R.C. 4719.01 et seq. (“TSSA”), and the Ohio Administrative Code, 109:4-3-01 et seq. (“O.A.C.”).
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3) in that some of the transactions complained of herein, and out of which this action arose, occurred in Cuyahoga County.
5. The Ohio Attorney General is the proper party to commence these proceedings under the authority provided him under R.C. 1345.07.

DEFENDANTS

6. Defendant American Hearing Centers Network, LLC (“AHCN”) is an Ohio company that is registered with the Ohio Secretary of State under Registration No. 1989906.
7. Upon information and belief, Defendant AHCN has also done business as North American Hearing and Loud & Clear Hearing Center.
8. Defendant Joseph Boles (“Boles”) is a natural person who resides at 4595 Sharon Copley Road, Medina, Ohio 44256.
9. Defendant Boles is the owner and registered agent for Defendant AHCN.

10. Defendant Southland Hearing Center (“Southland”) is an Ohio company that is registered with the Ohio Secretary of State under Registration No. 1962866.
11. Defendant Jeffrey Jones (“Jones”) is a natural person who resides at 29 N. Carpenter, New Brunswick, Ohio 44212.
12. Defendant Jones is the owner and registered agent for Defendant Southland.
13. Defendant AHCN is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by offering hearing screenings and hearing aids to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
14. Defendant Southland is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by offering hearing screenings and hearing aids to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
15. Defendant Boles is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by offering hearing screenings and hearing aids to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).
16. Defendant Jones is a “supplier” as that term is defined in R.C. 1345.01(C) as Defendant was, at all times relevant herein, engaged in the business of effecting consumer transactions by

offering hearing screenings and hearing aids to consumers for purposes that were primarily personal, family or household within the meaning specified in R.C. 1345.01(A) and (D).

17. Defendant Boles, by virtue of his position as owner of Defendant AHCN, alone or in conjunction with others, caused, participated in, controlled, directed, ratified and/or ordered the violations of law alleged in this Complaint.

18. Defendant Jones, by virtue of his position as owner of Defendant Southland, alone or in conjunction with others, caused, participated in, controlled, directed, ratified and/or ordered the violations of law alleged in this Complaint.

STATEMENT OF FACTS

19. Defendants are, and have been at all relevant time, engaged in the business of soliciting, offering, and selling hearing screenings and hearing aids to consumers in the State of Ohio, including Cuyahoga County.

20. Defendants have advertised their products and services by mail to consumers in Ohio. (See attached solicitation, **Exhibit A**).

21. Exhibit A is a direct mail solicitation from the Defendants that uses the heading “Three Million Dollar Stimulus Package Announced for Ohio” and goes on to discuss a “new two million dollar Hearing Stimulus Package for Ohio residents.” This has the capacity to deceive and mislead consumers into believing that the mailing is from the federal government, that the supplier is an agency of the federal government, or that the program is funded and/or operated by the federal government when such in fact is not true.

22. Defendants also advertised their products and services by making telephone calls to Ohio consumers' homes.
23. During these telephone calls, the Defendants offer their products and services and invite consumers to attend events where they can be screened and fitted for hearing aids for free.
24. Defendant AHCN is not registered as a telephone solicitor in Ohio.
25. Defendant Southland is not registered as a telephone solicitor in Ohio.
26. Defendant Boles is not registered as a telephone solicitor in Ohio.
27. Defendant Jones is not registered as a telephone solicitor in Ohio.
28. On its Purchase Agreement (**Exhibit B**), Defendant AHCN lists five Ohio business locations:
 - a. 3864 Center Road, Bldg. A2
Brunswick, OH 44212
 - b. 1260 Lexington Ave., Suite 2
Mansfield, OH 44907
 - c. 3618 W. Market Street, Suite 12
Akron, OH 44333
 - d. 314 S. Main Street
Mt. Vernon, OH 43050
 - e. 6929 W. 130th Street, #504
Parma Heights, OH 44130
29. Defendant Southland also uses the address 6929 W. 130th Street, #504, Parma Heights, Ohio 44130 as its principal place of business. (**Exhibit C**)
30. One of the telephone numbers listed on the Purchase Agreement for Defendant AHCN is 440-345-5077. (See **Exhibit B**)
31. The telephone number listed for Defendant Southland on its appointment cards is 440-345-5077. (See **Exhibit C**)

32. When several Ohio consumers have called Defendant Southland's phone number to speak with someone at Southland Hearing, Defendant Boles from American Hearing Center Network has taken their calls and spoken with the consumers.
33. Both Defendants Boles and Jones have had direct contact with consumers, including the sale of hearing aids and related products, signing the purchase agreements or contracts with consumers, and responding to consumer complaints.
34. Upon information and belief, the Defendants targeted senior citizens as the recipients of their solicitations.
35. Several consumers were contacted by telephone to advertise events hosted by the Defendants where consumers could get free hearing screenings, fittings, and hearing aids.
36. When consumers attended these events, many were told that the hearing aids were free due to a current promotion.
37. These consumers were also told that the only costs to them would be for batteries and warranties.
38. The Defendants encouraged consumers to pay for the batteries and warranties by using a financing service called CareCredit.
39. Many consumers were surprised to learn when they received their first monthly bills from CareCredit that the batteries and warranties that they purchased cost thousands of dollars.
40. Some consumers were completely unaware that they were signing up for a credit account until they received a bill in the mail from CareCredit. These consumers were told that the hearing aids that they were sent home with were free and, therefore, did not authorize the Defendants to open accounts in their names.

41. The Defendants' Purchase Agreement states that the consumer has the "RIGHT TO RETURN THE HEARING AID WITHIN THIRTY DAYS AND RECEIVE A REFUND."
(See **Exhibit B**)
42. In some instances, consumers have purchased hearing aids from the Defendants and then tried to return them within the thirty-day cancellation period. Despite being within the cancellation period, the Defendants have refused to issue refunds.
43. Several Ohio consumers have sent their hearing aids back to Defendant AHCN and/or Defendant Southland and have never received their repaired devices.
44. Consumers have purchased warranties from the Defendants for their hearing aids and batteries and the Defendants have failed to honor those warranties.
45. Defendants sold multi-year warranties to Ohio consumers that cost thousands of dollars and then went out of business, in some cases within months of the sales.

COUNT ONE
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

46. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through forty-five (1 – 45) of this Complaint.
47. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A), as set forth in R.C. 1345.02(B)(1), by representing that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits that it does not have.

48. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO
UNFAIR OR DECEPTIVE ACTS OR PRACTICES

49. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through forty-eight (1 – 48) of this Complaint.

50. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.02(A), as set forth by R.C. 1345.02(B)(10), by representing that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties or other rights, remedies, or obligations if the representation is false.

51. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
UNCONSCIONABLE ACTS OR PRACTICES

52. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through fifty-one (1 – 51) of this Complaint.

53. Defendants committed unconscionable acts or practices in violation of R.C. 1345.03(A), as set forth by R.C. 1345.03(B)(5), by requiring the consumer to enter into a consumer transaction on terms the Defendants knew were substantially one-sided in favor of the Defendants.

54. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR
UNFAIR AND DECEPTIVE ACTS AND PRACTICES

55. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through fifty-four (1 – 54) of this Complaint.

56. Defendants committed unfair or deceptive acts or practices in violation of R.C. 1345.30(B), R.C. 1345.31, and R.C. 1345.02(A) by failing to provide a refund to the consumer if the hearing aid is returned to the dealer, fitter, physician, or audiologist not later than thirty days after its original delivery.

57. Defendants committed unfair or deceptive acts or practices in violation of O.A.C. 109:4-3-09 and R.C. 1345.02(A) by failing to make refunds to consumers.

COUNT FIVE
UNFAIR AND DECEPTIVE ACTS AND PRACTICES
TELEPHONE SOLICITATION SALES ACT

58. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through fifty-seven (1 – 57) of this Complaint.

59. Defendants committed unfair or deceptive acts or practices in violation of R.C. 4719.02(A) and R.C. 1345.02(A) by engaging in telephone solicitations in Ohio while failing to obtain a certificate of registration as a telephone solicitor from the Ohio Attorney General.

60. Such acts and practices have been previously determined by Ohio courts to violate the CSPA. Defendants committed said violation after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

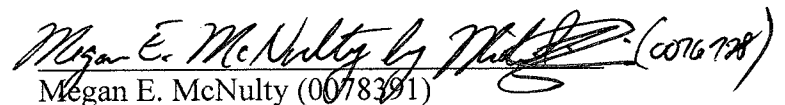
- A. DECLARE that each act or practice complained of herein violates the CSPA in the manner set forth in the Complaint;
- B. ISSUE PERMANENT INJUNCTIVE RELIEF enjoining Defendants American Hearing Centers Network, Southland Hearing, Joseph Boles, and Jeffrey Jones, doing business under those names or any other names, their agents, partners, servants, representatives, salespersons, employees, successors and assigns, and all persons acting in concert and participation with them, directly or indirectly, through any consumer transaction from committing any unfair, deceptive, or unconscionable act or practice which violates the CSPA, including but not limited to violations of the specific statutes and rules alleged to have been violated herein;
- C. ISSUE PERMANENT INJUNCTIVE RELIEF, pursuant to R.C. 1345.07, enjoining Defendants from engaging in business as suppliers in any consumer transaction in the State of Ohio until such time as they have satisfied all monetary obligations due hereunder;
- D. GRANT A JUDGMENT against Defendants, to be owed jointly and severally, in an amount sufficient to reimburse all consumers found to have been damaged by the

Defendants' unfair, deceptive, and unconscionable acts and practices of which Plaintiff complains;

- E. ASSESS, FINE AND IMPOSE upon EACH of the Defendants a civil penalty of Twenty-Five Thousand Dollars (\$25,000.00) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D);
- F. ORDER Defendants, as a means of insuring compliance with this Court's Order and with the consumer protection laws of Ohio, to maintain in their possession and control for a period of five (5) years all business records relating to Defendants' solicitation, offer, and sale of hearing aids and related services in the State of Ohio and to permit the Ohio Attorney General or his representative, upon a reasonable twenty-four (24) hour advance notice, to inspect and/or copy any and all such records;
- G. GRANT the Ohio Attorney General his costs in bringing this action;
- H. ORDER Defendants to pay all court costs, to be owed jointly and severally;
- I. GRANT such other relief as the Court deems to be just, equitable, and appropriate.

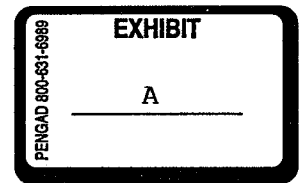
Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

 (0078391)

Megan E. McNulty (0078391)
Assistant Attorney General
Consumer Protection Section
One Government Center, Suite 1340
Toledo, Ohio 43604
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THREE MILLION DOLLAR HEARING STIMULUS PACKAGE ANNOUNCED FOR OHIO



OHIO-A new two million dollar Hearing Stimulus Package for Ohio residents has been announced, and will go into effect immediately. National Government statistics have revealed that over one million individuals in Ohio have a hearing loss that affects their quality of life.

This long awaited Hearing Stimulus benefit will initially be offered through selected hearing aid distribution offices serving 25 Ohio Counties. Ohio residents will receive a \$1500 voucher that can be used toward the purchase of (2) advanced digital technology hearing aids (\$750 per hearing aid). This \$1500 voucher can be used in combination with all qualified hearing insurance benefits. **This is NOT part of a government sponsored benefit or bailout, and DOES NOT HAVE TO BE REPAID.**

The selected offices have also agreed to provide complimentary hearing health screenings at no charge, and additional hearing exams necessary to determine an individual's need for hearing aids. Please be advised that all hearing testing and counselling will be conducted by Ohio Licensed Specialists.

In addition, this Hearing Stimulus Package will provide each individual with a 60 day exchange privilege on all hearing aid technology, hearing aid batteries at special discounts, and guaranteed lowest pricing on all hearing technology. Those individuals who currently have older hearing aid technology will be given a trade-in value of those hearing aids off of current manufacturer's suggested hearing aid pricing.

Those individuals interested in taking advantage of this Hearing Stimulus Package can use the voucher received in the mail, or they can request their \$1,500 voucher by calling the phone listed below. Once the designated office receives the voucher or is contacted by the individual, a date and time for the required hearing screening examination will be arranged to determine their qualification for the \$1,500 voucher. Unfortunately, this stimulus package will be limited to the first 2,000 individuals throughout Ohio that apply and qualify for this offer.

Please phone your request today! Our operators are standing by to arrange an appointment for you to determine if you qualify for this special voucher offer. Please check with relatives and friends, and if any of those individuals are experiencing difficulties with their hearing, be sure to give them the phone number below, and special arrangements will be made to be sure that their Stimulus Voucher Check is waiting for them at the time of their appointment. If you are not experiencing a hearing loss and are not in need of using the Stimulus Voucher Check enclosed, please pass it on to someone you know that will benefit from this special limited time offer.

For Immediate Response, Call Today:

Toll Free 1-800-991-3277

***PLEASE NOTE:** Voucher may be redeemed **ONLY** at participating offices. Please bring the enclosed official authorized voucher with you to your scheduled appointment time. If you are responding to a newspaper ad, your voucher will be sent to the participating offices. Sorry no copies can be accepted. This is limited to only a first come first serve basis. This is a private voucher discount program not requiring the use of government backed funding, and is available to all Ohio residents with a hearing loss.

United States Government Statistics estimate that there are over one million individuals in Ohio who suffer from a hearing loss that may be corrected. For a limited time, a National Laboratory that specializes in the manufacturing of Advanced Digital Hearing Aid Technology has granted permission to lower their Manufacturer's Suggested Pricing by \$1,500. So, during the dates and times listed below, patients will receive a matching discount to be used with their Hearing Stimulus Voucher for a total of \$3,000 in discounts. Patients will still be allowed to use their participating insurance provider, and if they are currently using older hearing aid technology, they will be allowed an additional trade-in discount. Appointments are limited, so call today, as we expect a strong response to this Hearing Stimulus offer.

August 10-12

August 16-18

9:00 AM to 5:00 PM

**Hearing Stimulus Voucher
Participating Offices**

**North American Hearing Centers
3864 Center Road, Building A-2
Brunswick, OH 44212**

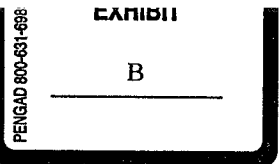
**Southland Hearing Center
6929 W. 130th Street Suite #504
Parma Heights, OH 44130**

**For Stimulus Voucher Appointments
Call Today**

Toll Free 1-800-991-3277

PURCHASE AGREEMENT AND RECEIPT

American Hearing Centers Network



- 3864 Center Rd. Bldg. A2 Brunswick, OH 44212 Phone: 330-225-6800
- 1260 Lexington Ave, Suite 2 Mansfield, OH 44907 Phone: 419-529-8100
- 3618 W. Market St. Suite 12 Akron, OH 44333 Phone: 330-666-7111
- 314 S. Main St. Mt. Vernon, OH 43050 Phone: 740-397-3399
- 6929 W. 130th Street #504 Parma Heights, OH 44130 Phone: 440-345-5072

	MODEL AND CIRCUIT	EAR(S)	TRANSACTION DATE
Tech Care • Lifetime Care at all locations with \$20.00 office visits • One-year hearing loss change protection • <u>12</u> Month Warranty with NO DEDUCTIBLE • <u>12</u> Month of lost, stolen & damaged protection (LS&D) • \$500 deductible for each originally purchased hearing instrument, limited to one replacement during the LS&D period	<u>Unita CIC</u> Hearing Instrument Price..... \$ <u>4990⁰⁰</u> <input type="checkbox"/> Tech Care <input type="checkbox"/> Tech Care Gold..... \$ _____ Earmold(s) (Non-Refundable)..... \$ <u>450⁰⁰</u> <u>Fitting Fee</u> \$ <u>850⁰⁰</u> <u>ST/MS/SH/CK/EMOLA DISCOUNT (Normal)</u> \$ <u>1500⁰⁰</u> Trade-In (Make & S.N.)..... <u>RETURN \$</u> _____ Total Cost..... \$ <u>3750⁰⁰</u> Initial Payment (Pmt. Method)..... <u>CHECK # 4066</u> \$ <u>100⁰⁰</u> Balance Due At Delivery..... \$ <u>2750⁰⁰</u>	<input checked="" type="radio"/> R <input type="radio"/> L (Circle)	<u>9/2/11</u>
Tech Care Gold • Lifetime Care at all locations Office Visits included • 3 year hearing loss change protection • 5 years of quality batteries • 5 year limited warranty • 10 years of lost, stolen & damaged protection (LS&D) • \$500 deductible for each originally purchased hearing instrument, limited to one replacement during the LS&D period			
Insurance Payments Purchaser acknowledges financial responsibility for the full cost of the hearing instrument. At the time of delivery, Purchaser shall pay any co-pay or deductible amount. If Seller has not been paid by Purchaser's insurance company within ninety (90) days of delivery, the Purchaser shall immediately make payment in full to the Seller. Purchaser may then seek reimbursement from their insurance provider.			
Purchaser Initials 	Print Purchaser <u>Geoffrey Peterson</u> Street <u>1162 N. Jefferson St</u> Ph# <u>(330) 722-5134</u> City <u>London</u> State <u>OH</u> Zip <u>44256</u>		

The Purchaser is advised that any examination, fitting, recommendation, or representation made by a licensed hearing instrument specialist or audiologist in connection with the sale of this hearing instrument is not an examination, diagnosis, or prescription made by a person licensed to practice medicine in the State and therefore must not be regarded as medical opinion or advice. Purchaser acknowledges receipt of a completed copy of this contract which has been signed by both the Purchaser and the Seller.

HCP Signature [Signature] Lic# 2864 Purchaser's Signature [Signature]
 (In-home sale only.) "You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation for an explanation of this right."

RIGHT TO RETURN THE HEARING AID WITHIN THIRTY DAYS AND RECEIVE A REFUND

Under Ohio law (section 1345.30 of the Revised Code), a consumer has the right to return a hearing aid for any reason within thirty days after it is originally delivered to the consumer or a person acting on the consumer's behalf and receive a refund of the consideration paid for the hearing aid less an amount specified by the hearing aid dealer, hearing aid filter, physician, or audiologist, to cover expenses incurred in connection with the hearing aid not later than fifteen days after presenting proof of payment for the hearing aid and returning it in the condition in which it was received, except for normal wear and tear. In this case the amount deducted from the refund will be \$595.00 per hearing aid plus ear mold cost.

WARRANTY: The hearing instrument(s) registered under this document is warranted to be free from defects in workmanship and materials at time of delivery. For a period of one year from date of purchase, we will make all necessary repairs promptly and without charge. (Any changes will be written above.) If the hearing instrument(s) requires repair or service, it should be returned to the hearing care practitioner from whom it was purchased, or any authorized hearing care practitioner in the U.S. or Canada for service. The practitioner will check our hearing(s) and determine if factory repair is necessary. There are no express warranties other than those stated here. Not covered unless otherwise indicated: cords, batteries, tubing, and earmolds; breakage or damage resulting from accident, abuse, dropping, mishandling, or misuse; attempts to repair, or to open, or to take apart the hearing instrument(s) persons other than authorized AHCN practitioners or their employees, except to remove cords and batteries. The degree of hearing improvement and satisfaction received is not covered, but is dependent upon the proper fitting and adjustment by the hearing care practitioner from whom it was purchased. This warranty gives you specific legal rights, and you may also have other rights, which vary from state to state. Shell remakes are not included after the first year.

Receipt is hereby acknowledged of hearing instrument(s) Serial No. L 11090720 R 11090721

Amount billed to insurance \$ _____ Tech Care Gold battery size _____ Quantity L _____ R _____

Amount paid at delivery \$ 2750⁰⁰ Payment method: (Circle One) Cash, Credit Card, Finance, Check# 4071

HCP Signature [Signature] Purchaser's Approval [Signature] Date 9/2/11

BBB 216.241.7678
PROLINE
ADVANCED
HEARING
INDEPENDENT

Southland Hearing Center
6929 West 130th St., Suite 504
Parma Heights, OH 44130
440-345-5077

RONALD

Your next appointment is:

MON TUES WED THURS FRI

Month/Dy FEB 21, 2012

Time: 2:18 PM AM PM

PL720-020341 ©2011 SR

