

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

STATE OF OHIO ex rel.)	CASE NO.
OHIO ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE
30 E. Broad Street, 14th Floor)	
Columbus, Ohio 43215)	
)	
Plaintiff,)	COMPLAINT AND REQUEST
)	FOR DECLARATORY JUDGMENT,
v.)	INJUNCTIVE RELIEF,
)	CONSUMER DAMAGES, AND
)	AND CIVIL PENALTIES
ROTECH HOLDINGS, LTD)	
d/b/a RH Group)	
50 Alcona Avenue)	
Amherst, NY 14226)	
)	
and)	
)	
SEAN M. LISTA, individually)	
and dba ROTECH HOLDINGS, LTD.)	
and dba RH GROUP)	
10505 Bergtold Road)	
Clarence, New York 14031-2104)	
)	
and)	
)	
GLENN R. LISTA, individually)	
and dba ROTECH HOLDINGS, LTD.)	
and dba RH GROUP)	
4760 Harris Hill Road)	
Buffalo, New York 14221-6228)	
)	
Defendants.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, through counsel Attorney General of Ohio, Michael DeWine, 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 the Attorney General by R.C. 1345.07.

2. The actions of Defendants Rotech Holdings, Ltd. (“Rotech”), Sean M. Lista, and Glenn R. Lista (“Defendants”), hereinafter described, have occurred in the state of Ohio, in Franklin County and in other counties in Ohio and, as set forth below, are in violation of the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692 - 1692(p).
3. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
4. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that Franklin County is where Defendants conducted some of the transactions complained of herein.

DEFENDANTS

5. Defendant Rotech is a New York Corporation whose principal place of business is located at 50 Alcona Avenue, Amherst, New York, 14226.
6. Defendant Rotech was never registered as a foreign corporation with the Ohio Secretary of State.
7. Defendant Sean M. Lista is a natural person who resides at 10505 Bergtold Road, Clarence, New York, 14031-2104.
8. Defendant Glenn R. Lista is a natural person who resides at 4760 Harris Hill Road, Buffalo, New York, 14221-6228.
9. Upon information and belief, Defendant Sean M. Lista directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices of Rotech, as described in this Complaint.
10. Upon information and belief, Defendant Sean M. Lista directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices of Rotech, as described in this Complaint.

11. Defendants do business in Ohio using the unregistered fictitious business name RH Group and have in the past done business in Ohio using the unregistered fictitious business name RTH Group.
12. Defendants misrepresent to consumers that Rotech's principal place of business is located in the state of Washington.
13. Defendants are "suppliers" as that term is defined in R.C. 1345.01(C) of the CSPA as Defendants have, at all times relevant herein, engaged in the business of effecting consumer transactions either directly or indirectly by enforcing or attempting to enforce the payment of debts allegedly owed by consumers, which arose from consumer transactions for primarily personal, family, or household purposes within the meaning specified in R.C. 1345.01(A) and (D), in Franklin County and other counties in the state of Ohio.
14. Defendants are "debt collectors" as that term is defined in 15 U.S.C. 1692(a)(6) of the FDCPA as Defendants have, at all times relevant herein, used an instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of any debts, as defined by 15 U.S.C. 1692(a)(5), or regularly collected or attempted to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, from individuals in Franklin County and other counties in the State of Ohio and throughout the United States.

STATEMENT OF FACTS

15. Defendants purchase alleged debts and engage in the practice of debt collection by regularly collecting or attempting to collect from consumers debts that are due or alleged to be due.
16. Defendants attempt to collect on alleged debts by placing telephone calls to alleged consumer debtors.

17. In many cases, consumers have never owed the debts the Defendants are attempting to collect or have previously paid off the debts.
18. Defendants engage in conduct that is harassing or abusive to consumers in an effort to intimidate consumers into paying debts allegedly owed.
19. During telephone calls to consumers, Defendants use abusive or profane language in connection with the collection of debts.
20. Defendants collect or attempt to collect debts allegedly owed by consumers by making false or misleading statements, including representations that a civil or criminal action is imminent if consumers fail to pay a debt immediately.
21. Defendants tell consumers that they had been “served” and/or instruct consumers to contact the “plaintiff” as a way to misrepresent to consumers that a civil legal action has been initiated.
22. Defendants threaten actions against consumers when there is no legal authority or intention to do so, including representations that subpoenas or summonses will be issued and that consumers will be arrested or jailed if the consumers do not pay the alleged debts.
23. Defendants contact consumers repeatedly or continuously by telephone to collect an alleged debt, even after the consumers advise Defendants that they are not the persons who owe the alleged debts and they do not know the persons who Defendants are trying to contact.
24. Defendants continue to place telephone calls to consumers’ places of employment after consumers or representatives of the consumers’ employers instruct Defendants to cease calling those telephone numbers.
25. Defendants communicate with persons other than the consumers—including the consumers’ employers, co-workers, or family members—regarding the consumers’ debts, without the prior consent of the consumers.

26. Defendants use harassing, abusive, or threatening language when communicating with third parties—including the consumers’ employers, co-workers, or family members—about consumers’ debts.

COUNT I

Violations of the FDCPA

27. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.

28. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A) by using debt collection methods that violate the FDCPA, 15 U.S.C. 1692 – 1692p.

29. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT II

Engaging in Harassing or Abusive Behavior

30. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.

31. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by engaging in conduct the natural consequence of which is to harass, oppress, or abuse in connection with the collection of a debt.

32. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by, during telephone calls, using abusive or profane language in connection with the collection of debts.

33. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by contacting consumers repeatedly or continuously by telephone to collect alleged debts after the consumers advised Defendants that they were not the persons who owed the alleged debts and they did not know the persons who Defendants were trying to contact.
34. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by communicating with consumers in the collection of debts at the consumers' places of employment when the Defendants knew or had reason to know that the consumers' employers prohibited the consumers from receiving such communications.
35. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT III

Improper Communications With Third Parties

36. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.
37. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by calling third parties more than once after the third parties provided location information for consumers or indicated that they did not have the location information being sought.
38. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A) by communicating with persons other

than the consumers—including the consumers’ employers, co-workers, or family members—in the collection of debts, without the prior consent of the consumers.

39. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by using harassing, abusive, or threatening language when communicating with third parties—including the consumers’ employers, co-workers, or family members—about consumers’ debts.
40. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT IV

False, Misleading, or Deceptive Representations

41. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs one through twenty-six (1-26) of this Complaint.
42. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and 1345.03(A) by making false, misleading or deceptive representations in connection with the collection of a debt.
43. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by attempting to collect debts by threatening actions against consumers when Defendants had no legal authority or intention to take such action.
44. Defendants committed unfair or deceptive, and unconscionable acts or practices in violation of the CSPA, R.C. 1345.02(A) and 1345.03(A) by representing or implying that nonpayment of debts will result in the arrest or filing of criminal or civil actions when such actions were not lawful or the Defendants did not intend to take such action.

45. Such acts or practices have been previously determined by Ohio courts to violate the CSPA, R.C. 1345.01 et seq. Defendants committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PRAYER FOR RELIEF

- A. **ISSUE A PERMANENT INJUNCTION** enjoining Defendant Rotech, Defendant Sean M. Lista, and Defendant Glenn R. Lista, doing business as Rotech Holdings, Ltd., RH Group, RTH Group, or any other names, their agents, representatives, salespeople, employees, successors, or assigns, and all persons acting in concert or participating with them, directly or indirectly, from engaging in the acts or practices of which Plaintiff complains and from committing any unfair, deceptive, or unconscionable acts or practices that violate the CSPA, R.C. 1345.01 et seq. or the FDCPA, 15 U.S.C. 1692 - 1692(p), including, but not limited to, violating the specific statutes alleged to have been violated herein.
- B. **ISSUE A DECLARATORY JUDGMENT** that each act or practice complained of herein violates the CSPA, R.C. 1345.01 et seq, and the FDCPA, 15 U.S.C. 1692 - 1692(p), in the manner set forth in this Complaint.
- C. **ORDER** Defendants, pursuant to R.C. 1345.07(B), to pay actual damages, including non-economic damages, to all consumers injured by the conduct of the Defendants as set forth in this Complaint.
- D. **ASSESS, FINE, AND IMPOSE** upon Defendants civil penalties of Twenty-Five Thousand Dollars (\$25,000) for each separate and appropriate violation described herein pursuant to R.C. 1345.07(D).
- E. **GRANT** Plaintiff its costs in bringing this action.
- F. **ORDER** Defendants to pay all court costs.

- G. **ISSUE AN INJUNCTION** prohibiting 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.
- H. **GRANT** such other relief as the Court deems to be just, equitable, and appropriate.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/ Tracy Morrison Dickens
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