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COMMON PLEAS DIVISION

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TRACY WINKLER
Clerk of Courts
Hamilton County, Ohio
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**STATE OF OHIO EX REL
ATTORNEY GENERAL
DEWINE**

A 1602927

vs.

**KEVIN JAY CALVIN DBA
ROCKET M**

**FILING TYPE: INITIAL FILING (OUT OF COUNTY) WITH NO JURY
DEMAND**

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EFR200

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

STATE OF OHIO, ex rel.)	CASE NO.
OHIO ATTORNEY GENERAL)	
MICHAEL DEWINE)	JUDGE
30 E. Broad Street, 14th Floor)	
Columbus, Ohio 43215)	
)	<u>COMPLAINT FOR</u>
Plaintiff,)	<u>DECLARATORY AND</u>
)	<u>INJUNCTIVE RELIEF,</u>
v.)	<u>DAMAGES, AND CIVIL</u>
)	<u>PENALTIES</u>
KEVIN J. CALVIN, individually)	
And Doing Business As:)	
Rocket Marketing)	
Network Solutions)	
Made in America Cleaning and Restoration)	
431 Ohio Pike, Suites 146 and 148)	
Cincinnati, Ohio 45255)	
)	
Defendant.)	

JURISDICTION AND VENUE

1. Plaintiff, State of Ohio, by and through Attorney General 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 the Consumer Sales Practices Act (“CSPA”), R.C. 1345.01 et seq., the Telephone Solicitation Sales Act (“TSSA”), R.C. 4719.01 et seq. and R.C. 109.87(D)(1).
2. Plaintiff, State of Ohio, by and through Attorney General Michael DeWine, having reasonable cause to believe that violations of the Telephone Consumer Protection Act (“TCPA,”) 47 U.S.C. 227 and Code of Federal Regulations (“C.F.R.”) 64.1200 have

occurred, brings this action in the public interest pursuant to the authority vested in him by R.C. 109.87(D)(1). The Ohio Attorney General is authorized to bring an action for violations of the federal TCPA in an appropriate court of common pleas in the state against a seller or telemarketer who violates any provision of federal acts or rules as defined by R.C. 109.87(A)(1).

3. This Court has jurisdiction over the subject matter of this action pursuant to the CSPA, R.C. 1345.04, the TSSA, R.C. 4719.12(A) 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 Defendant Calvin resided and operated his principal place of business in Hamilton County and conducted activity which gave rise to the claims for relief in Hamilton County.
5. The actions of Defendant Calvin, as set forth below, are in violation of the CSPA, R.C. 1345.01 et seq., the TSSA, R.C. 4719.01 et seq., the TCPA, 47 U.S.C. 227, 47 C.F.R. 64.1200 and R.C. 109.87(B)(1).

DEFENDANT

6. Defendant Calvin resided and conducted business from 431 Ohio Pike, Suites 146 and 148, Cincinnati, Ohio 45255, which are located in Hamilton County.
7. Defendant Calvin utilized at least three fictitious business names including: Network Solutions, Rocket Marketing and Made in America Cleaning and Restoration. The business names are not registered with the Ohio Secretary of State nor do they appear to be organized and registered in any other state.

8. Defendant is a “supplier” as he was, at all times relevant herein, engaged in the business of effecting “consumer transactions” either directly or indirectly by soliciting and selling goods or services to consumers in the State of Ohio and nationwide, for purposes that were primarily personal, family or household in nature, as those terms are defined in the CSPA, R.C. 1345.01(A), (C), and (D).
9. Defendant initiated “telephone solicitations” to “purchasers,” as he was at all times relevant herein, engaged in initiating “communications” on behalf of “telephone solicitors” or “salespersons” to induce persons to purchase “goods or services,” as those terms are defined in the TSSA, R.C. 4719.01(A).
10. Defendant is a “telephone solicitor” as that term is defined in the TSSA, R.C. 4719.01(A)(8), as he was at all times relevant herein, engaged in initiating telephone solicitations 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.
11. Defendant is a “seller” as that term is defined in C.F.R. 64.1200(f)(9) as he is a person or entity on whose behalf telephone calls and messages were initiated for the purpose of encouraging the purchase of goods or services, which were transmitted to persons.
12. Defendant is a “telemarketer” as that term is defined in the C.F.R. 64.1200(f)(11) as he is a person or entity that initiated telephone calls or messages for the purpose of encouraging the purchase of goods or services, which were transmitted to persons.
13. Defendant engaged in “telephone solicitations” as that term is defined in the TCPA, 47 U.S.C. 227(a)(4) and C.F.R. 64.1200(f)(14) as he initiated telephone calls for the purpose of encouraging the purchase of goods or services, which were transmitted to persons.

14. Defendant utilized an automatic telephone dialing system as that term is defined in the TCPA, 47 U.S.C. 227(a)(1) and C.F.R. 64.1200(f)(2) as he used equipment with the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, to dial such numbers.

STATEMENT OF FACTS

15. Defendant initiated, or caused to be initiated, over 1.6 million telephone calls using artificial or prerecorded voices to deliver messages advertising his cleaning services.
16. Defendant initiated, or caused to be initiated, telephone calls to residential subscribers using artificial or prerecorded voices to deliver messages advertising his cleaning services that invited called parties interested in the offer to press “1” to be connected to a representative or to call a provided telephone number to schedule services.
17. At the conclusion of the prerecorded messages, called parties that attempted to speak to a representative by pressing “1” were often promptly disconnected.
18. The called parties that attempted to reach a representative by calling the telephone number provided in the prerecorded message were often not able to reach a live representative.
19. When called parties reached live representatives and requested not to be called again, Defendant failed to honor consumers’ requests.
20. At the conclusion of some of the prerecorded messages, called parties were given the option of pressing a number to automatically opt-out of future calls. However, Defendant failed to honor consumers’ requests submitted through the use of the automated opt-out process.

21. Defendant failed to provide reasonable opportunities or methods for consumers to request that the Defendant not call them again. As a result, many consumers were subjected to repeated calls from the Defendant.
22. Defendant repeatedly initiated telephone solicitations to the same telephone numbers causing aggravation for the called parties.
23. Defendant repeatedly initiated telephone solicitations to the same telephone numbers causing some consumers' voicemail boxes or answering machines to reach maximum capacity with Defendant's prerecorded messages.
24. Defendant repeatedly initiated telephone solicitations to the same telephone numbers using many different originating telephone numbers which frustrated consumers' efforts to prevent future solicitations by blocking the originating numbers displayed by caller identification services.
25. Defendant originated telephone solicitations while transmitting at least two fictitious business names to consumers' caller identification services which frustrated consumers' efforts to identify the true originator of the call.
26. Defendant disregarded consumers' privacy rights to opt out or avoid receiving telephone solicitations to which they objected.
27. Defendant initiated telephone solicitations to consumers' residential telephone numbers at unreasonable times or times known to be inconvenient, including before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.

28. Defendant initiated telephone solicitations to consumers' residential telephone numbers at unreasonable times or times known to be inconvenient, including programming an automatic telephone dialing system ("autodialer") to initiate calls continuously for 24-hour periods of time.
29. Defendant initiated telephone solicitations to residential telephone subscribers who had previously registered their telephone numbers on the Federal Trade Commission's National Do Not Call Registry.
30. Defendant initiated, or caused to be initiated, calls to cellular telephones or residential lines using an autodialer to deliver advertising messages from artificial or prerecorded voices without first obtaining the express written consent of the called parties.
31. Defendant solicited using automated or prerecorded voice messages sent, without prior express consent, to consumers' cellular telephones without regard for whether consumers incurred charges for receipt of the calls.
32. By soliciting using automated or prerecorded voice messages sent, without prior express consent, to consumers' cellular telephones, Defendant burdened consumers who were charged for receipt of calls advertising for his cleaning service.
33. Defendant initiated, or caused to be initiated, calls to cellular telephones or residential lines using an autodialer to deliver advertising messages from artificial or prerecorded voices without first obtaining the express written consent of the called parties.
34. Defendant initiated telephone solicitations using artificial or prerecorded voice messages that failed to state clearly, at the beginning of the message, the identity of the individual or business responsible for the call, specifying the name under which the business is

registered with the Ohio Secretary of State, or a comparable regulatory authority, to conduct business.

35. Defendant initiated telephone solicitations to cellular or residential telephone lines using artificial or prerecorded voice messages that failed to provide an automated, interactive voice- and/or key press- activated opt out mechanism for the called party to make a do-not-call request, including explanatory instructions within two (2) seconds of providing the identity of the business or individual responsible for the call.
36. Defendant initiated telephone solicitations to cellular or residential telephone lines which left artificial or prerecorded voice messages on voicemail services or answering machines that failed to provide a toll-free number that enables the called party to call back at a later time and connect directly to the automated, interactive voice- and/or key press- activated opt-out mechanism.
37. During the time frame relevant herein, Defendant was not registered as a telephone solicitor with the Ohio Attorney General's Office pursuant to the TSSA, R.C. 4719.02(A).
38. During the time frame relevant herein, Defendant did not have a surety bond as required by the TSSA, R.C. 4719.04(A) on file with the Ohio Attorney General's Office.

PLAINTIFF'S FIRST CAUSE OF ACTION:
VIOLATIONS OF THE CONSUMER SALES PRACTICES ACT

COUNT ONE
SOLICITATIONS BEFORE 8 A.M. OR AFTER 9 P.M.

39. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.

40. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone at unreasonable times or at times known to be inconvenient, including before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations.
41. The acts or practices described in paragraph 40 have been previously determined by Ohio courts to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT TWO
UNFAIR, DECEPTIVE OR UNCONSCIONABLE ROBOCALLING PRACTICES

42. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
43. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting using automated or prerecorded voice messages sent, without prior express consent, to consumers' cellular telephones without regard for whether consumers incurred charges for receipt of the calls.
44. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone using automated or prerecorded messages without providing reasonable opportunities or methods for consumers to opt out of further calls.
45. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice

of soliciting consumers by telephone using automated or prerecorded messages while transmitting unregistered or fictitious business names to caller identification services, frustrating consumers' efforts to identify the true originator of the call.

46. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone using automated or prerecorded messages that failed to provide the true name of the solicitor and business on whose behalf the solicitation was made.
47. The acts or practices as described in paragraph 46 have been previously determined by an Ohio court to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT THREE
FAILURE TO HONOR CONSUMERS' SPECIFIC REQUESTS

48. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
49. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone despite the fact that their telephone numbers were listed on the National Do Not Call Registry more than 31 days prior to the calls.
50. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone while failing to provide reasonable opportunities or

methods for consumers to opt out, request not to be called again or to avoid further solicitations to which they object.

51. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone while failing to maintain records of consumers' do-not-call requests.
52. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by engaging in a pattern or practice of soliciting consumers by telephone who previously requested not to be called.
53. The acts or practices described in paragraphs 51-52 have been previously determined by an Ohio court to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT FOUR
USING AN UNREGISTERED FICTITIOUS BUSINESS NAME

54. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
55. Defendant committed unfair or deceptive and unconscionable acts or practices in violation of CSPA, R.C. 1345.02(A) and 1345.03(A) by soliciting or engaging in consumer transactions while using business or fictitious names which were not properly registered with the Ohio Secretary of State or exempt from registration.
56. The acts or practices described in paragraph 55 have been previously determined by an Ohio court to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S SECOND CAUSE OF ACTION:
VIOLATIONS OF THE TSSA

COUNT FIVE
FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS

57. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
58. Defendant committed unfair or deceptive acts and practices in violation of CSPA, R.C. 1345.02(A) and TSSA, R.C. 4719.02(A) by acting as a telephone solicitor without first having obtained a certificate of registration from the Ohio Attorney General.
59. The acts or practices described in paragraph 58 have been previously determined by an Ohio court to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

COUNT SIX
FAILURE TO OBTAIN A SURETY BOND

60. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
61. Defendant violated TSSA, R.C. 4719.04(A) by acting as a telephone solicitor without first having obtained and filed with the Ohio Attorney General, a surety bond issued by a surety company authorized to do business in the State of Ohio.

COUNT SEVEN
FAILURE TO DISCLOSE TRUE NAME OF SOLICITOR AND BUSINESS

62. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
63. Defendant committed unfair or deceptive acts and practices in violation of CSPA, R.C. 1345.02(A) and TSSA, R.C. 4719.06 by failing to disclose the solicitor's true name and

the name of the company on whose behalf solicitations were made, within the first sixty seconds of the telephone call.

64. The acts or practices described in paragraph 63 have been previously determined by an Ohio court to violate the CSPA. Defendant committed said violations after such decisions were available for public inspection pursuant to R.C. 1345.05(A)(3).

PLAINTIFF'S THIRD CAUSE OF ACTION:
VIOLATIONS OF THE TCPA AND R.C. 109.87

COUNT EIGHT
PROHIBITED USE OF ARTIFICIAL OR PRERECORDED MESSAGES

65. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
66. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls to residential lines using artificial or prerecorded voices to deliver messages without the prior express written consent of the called parties. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(b)(1)(B) and 47 C.F.R. 64.1200(a)(3).

COUNT NINE
FAILURE TO IDENTIFY THE CALLER

67. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
68. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls to residential lines using artificial or prerecorded voices to deliver messages that failed to clearly identify, at the beginning of the message, the business and individual responsible for initiating the call. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(d)(3)(A) and 47 C.F.R. 64.1200(b)(1).

COUNT TEN
FAILURE TO PROVIDE A VALID TELEPHONE NUMBER

69. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
70. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls to residential lines using artificial or prerecorded voices to deliver messages that failed to provide a telephone number individuals could call during regular business hours for the duration of the telemarketing campaign to make a do-not-call request. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(b)(2)(c), 47 C.F.R. 64.1200(b)(2).

COUNT ELEVEN
FAILURE TO PROVIDE AUTOMATED OPT-OUT MECHANISM

71. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
72. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls to residential lines using artificial or prerecorded voices to deliver messages that failed to provide an automated, interactive voice- and/or key press- activated opt-out mechanism that enables the called person to make a do-not-call request prior to terminating the call. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(b)(2)(c), 47 C.F.R. 64.1200(b)(3).
73. Defendant violated R.C. 109.87(B)(1) by initiating telephone calls to residential lines using artificial or prerecorded voices to leave messages on answering machines or voicemail services without providing a toll-free number that enables the called parties to call back at later times to connect directly to the automated, interactive voice- and/or key press- activated opt-out mechanism that automatically records the person's number to the

seller's do-not-call list. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(b)(2)(c), 47 C.F.R. 64.1200(b)(3).

COUNT TWELVE
FAILURE TO COMPLY WITH DO NOT CALL LAWS

74. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
75. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations to residential telephone subscribers whose telephone numbers were listed on the National Do Not Call Registry. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(c) and 47 C.F.R. 64.1200(c)(2).

COUNT THIRTEEN
SOLICITATIONS BEFORE 8 A.M. OR AFTER 9 P.M

76. Plaintiff incorporates by reference, as if completely rewritten herein, the allegations set forth in paragraphs One through Thirty-Eight (1-38) of the Complaint.
77. Defendant violated R.C. 109.87(B)(1) by initiating telephone solicitations to residential telephone subscribers before the hour of 8:00 a.m. or after 9:00 p.m. local time at the called parties' locations. Defendant's conduct is prohibited by TCPA, 47 U.S.C. 227(c) and 47 C.F.R. 64.1200(c)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

- A. ISSUE an order declaring that the Defendant's acts and practices, as described herein, violated CSPA, R.C. 1345.01 et seq., TSSA, R.C. 4719.01 et seq. and R.C. 109.87(B)(1).
- B. ISSUE a permanent injunction enjoining Defendant, his agents, partners, representatives, employees, salespersons, successors or assigns, including any person or entity which purchases, acquires, or otherwise receives any interest (whether legal, equitable, contractual or otherwise) in Defendant's business and continues to engage in consumer transactions, from engaging in acts and practices which violate CSPA, R.C. 1345.01 et seq., TSSA, R.C. 4719.01 et seq. and R.C. 109.87(B)(1).
- C. ASSESS, FINE, and IMPOSE upon Defendant civil penalties as provided by R.C. 1345.07 for violations of the CSPA described herein.
- D. ASSESS, FINE, and IMPOSE upon Defendant civil penalties as provided by R.C. 4719.12 for violations of the TSSA described herein.
- E. AWARD STATUTORY DAMAGES of Five Hundred Dollars (\$500) to each person who received a telephone solicitation from Defendant in violation of R.C. 109.87(B)(1) as described herein, pursuant to 47 U.S.C. 227(g)(1), or three times that amount if the Court finds that Defendant's actions were committed willfully and knowingly. Plaintiff may recover these damages on behalf of consumers pursuant to R.C. 109.87(D)(1).
- F. GRANT Plaintiff its expenses and costs incurred in bringing this action pursuant to TSSA, R.C. 4719.12(A).
- G. GRANT such other relief as the court deems to be just, equitable, and appropriate.
- H. ORDER Defendant to pay all court costs associated with this matter.

Respectfully submitted,

MICHAEL DEWINE
Ohio Attorney General

/s/ Erin B. Leahy

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