

The Honorable Mariane Spearman

**STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

ROTECH HOLDINGS LTD, a New York corporation, d/b/a ROTECH HOLDINGS, RH GROUP, RH HOLDINGS, RH GROUP ROTECH HOLDINGS, RTH HOLDINGS, and RTH GROUP; GLENN R. LISTA; and SEAN M. LISTA,

Defendants.

NO. 15-2-20427-1SEA

AMENDED COMPLAINT FOR INJUNCTIVE AND OTHER RELIEF

**I. INTRODUCTION**

1.1 Plaintiff, the State of Washington, by and through its attorneys Robert W. Ferguson, Attorney General, and Kimberlee Gunning, Assistant Attorney General, brings this action against Defendants Rotech Holdings Ltd. d/b/a Rotech Holdings, RH Group, RH Holdings, RH Group Rotech Holdings, RTH Holdings, and RTH Group, Glenn R. Lista, and Sean M. Lista. The claims for relief alleged herein, arise from Defendants' unfair practices in collecting, and attempting to collect, alleged debts from businesses, other entities, and/or persons in Washington. These debt collection activities violate the Consumer Protection Act, RCW chapter 19.86, and the Collection Agency Act, RCW chapter 19.16.

1 **II. PARTIES**

2 2.1 Plaintiff is the State of Washington (the "State").

3 2.2 Defendant, Rotech Holdings Ltd., d/b/a Rotech Holdings, RH Group, RH  
4 Holdings, RH Group Rotech Holdings, RTH Holdings, and RTH Group ("Rotech") is a New  
5 York corporation with its principal place of business in Erie County, New York. Upon  
6 information and belief, Rotech's principal place of business is currently in Buffalo, Erie  
7 County, New York. At times relevant to this Complaint, Rotech's principal place of business  
8 has also been in Clarence, Erie County, New York, and Williamsville, Erie County, New York.

9 2.3 Defendant, Glenn R. Lista, resides in Buffalo, Erie County, New York. He is  
10 now, and has been at all times relevant to this action, a principal owner and operator of Rotech.  
11 Upon information and belief, he has participated in, or with constructive or actual knowledge,  
12 approved of the acts, practices, and activities of Rotech that are the subject matter of this  
13 Complaint.

14 2.4 Defendant, Sean M. Lista, resides in Clarence, Erie County, New York. He is  
15 now and has been at all times relevant to this action, a principal owner and operator of Rotech.  
16 Upon information and belief, he has participated in, or with constructive or actual knowledge,  
17 approved of the acts, practices, and activities of Rotech that are the subject matter of this  
18 Complaint.

19 2.5 For purposes of this Complaint, the term "Defendants," unless otherwise specified,  
20 shall refer collectively to Rotech, Glenn R. Lista, and Sean M. Lista.

21 **III. JURISDICTION**

22 3.1 The State files this complaint and institutes these proceedings under the  
23 provisions of the Consumer Protection Act, RCW chapter 19.86 ("CPA") and the Collection  
24 Agency Act, RCW chapter 19.16 ("CAA"). The Attorney General is authorized under  
25 RCW 19.86.080 and RCW 19.86.140 to bring suit to enforce the CPA's prohibitions on unfair  
26 or deceptive acts or practices in the conduct of trade or commerce, including violations of the

1 CAA, which are *per se* unfair acts or practices in the conduct of trade or commerce for  
2 purposes of the CPA. See RCW 19.16.440. The Attorney General is authorized under  
3 RCW 19.16.460 to bring suit to restrain and prevent any violation of the CAA.

4 3.2 This Court has personal jurisdiction over Defendants pursuant to  
5 RCW 19.86.160, RCW 19.16.390, RCW 4.28.180, and RCW 4.28.185 because they have  
6 purposely acted or consummated transactions in the State of Washington, and thus have  
7 purposely availed themselves of the privilege of conducting business in the State of  
8 Washington. Defendants have collected or attempted to collect debts from Washington  
9 residents. The violations of RCW chapter 19.86 and RCW chapter 19.16 alleged herein arise  
10 from or are connected with those transactions. Exercise of personal jurisdiction over  
11 Defendants comports with traditional notions of fair play and substantial justice, and  
12 jurisdiction is not inconsistent with the United States Constitution or the Washington State  
13 Constitution.

14 3.3 This Court has subject matter jurisdiction over this action under  
15 RCW 19.86.140.

#### 16 IV. VENUE

17 4.1 Venue is proper in King County pursuant to RCW 4.12.020 and RCW 4.12.025,  
18 and Civil Rule 82 because Defendants have transacted business in King County – to wit, by  
19 collecting or attempting to collect debts from persons located in King County – and transacted  
20 such business in King County at the time the causes of action in this Complaint arose.  
21 Defendants have also represented to persons from whom they have attempted to collect debts  
22 that they are based in the Seattle, Washington area and/or that they have places of business in  
23 Bellevue and Seattle, Washington.

#### 24 FACTS

25 5.1 Rotech operates a collection agency. On its website,  
26 [www.rotechholdings.com/About-Us.html](http://www.rotechholdings.com/About-Us.html) it states that “[o]ur company purchases consumer

1 debt for the purposes of collection and settlement. Our debt is wholly owned and company  
2 managed – which strongly influences how we operate. We carefully and selectively purchase  
3 debt that meets our high qualification standards. This translates into integrity and a personal  
4 focus as we work. We adhere to the strictest industry standards, federal regulations and  
5 nationwide state by state rules and legislature.”

6 5.2 Glenn R. Lista and Sean M. Lista are owners and operators of Rotech. At all  
7 times relevant to this action, Glenn R. Lista and Sean M. Lista participated in, and/or with  
8 knowledge approved of, Rotech’s business activities that are the subject of this Complaint.

9 5.3 Defendants contact consumers, including Washington residents, by telephone  
10 regarding alleged debts. Defendants often represent to consumers in several states that they are  
11 based in the Seattle area and/or that they have an address in Bellevue or Seattle, Washington.

12 5.4 Many of the alleged debts on which Defendants try to collect are purported  
13 debts from payday lenders, including online payday lenders.

14 5.5 Defendants harass consumers with multiple telephone calls, often calling them  
15 at work, as well as at home. On some occasions, Defendants contact consumers’ family  
16 members and employers.

17 5.6 Once Defendants make contact with the purported debtor, they often set what  
18 appears to be an artificial or arbitrary deadline by which the consumer must call a certain  
19 telephone number to avoid facing possible legal action. Defendants have also claimed to be an  
20 arbitrator or arbitration firm or have stated or implied they are a process server. Defendants  
21 often threaten to serve a collection lawsuit on the consumer.

22 5.7 Defendants sometimes threaten consumers with arrest or jail time if they do not  
23 pay the purported debt. In one instance, Defendants told the parent of the alleged debtor that  
24 she would be arrested for “harboring” her adult child. Another way Defendants threaten  
25 consumers is by suggesting that they have the person’s social security number or other  
26 personal information.





1 7.4 Pursuant to RCW 19.16.440, the operation of a collection agency or out-of-state  
2 collection agency without a license as prohibited by RCW 19.16.110, is an unfair act or practice  
3 in the conduct of trade or commerce for the purpose of the application of the CPA.

4 7.5 As alleged above, Defendants' failure to obtain a license as an out-of-state  
5 collection agency or as a collection agency from the Washington State Department of Licensing  
6 violates RCW 19.16.110, and thus is an unfair act or practice in the conduct of trade or commerce  
7 under the CPA.

8 7.6 Defendants' unfair practices affect the public interest because they had a uniform  
9 practice of collecting or attempted to collecting alleged debts from persons in Washington without  
10 possessing a license as an out-of-state collection agency or as a collection agency.

11 7.7 The State requests that the Court declare that the acts and practices described  
12 above violate the CPA, and pursuant to RCW 19.86.080(1), enjoin and restrain Defendants from  
13 violating the CPA.

14 **VII. THIRD CLAIM FOR RELIEF**

15 **(Violation of RCW 19.86 – Non –Per Se Unfair or Deceptive Acts or Practices –**  
16 **Representations Regarding Licensed Status)**

17 8.1 The State realleges and incorporates by reference the allegations set forth in each  
18 of the preceding paragraphs of this Complaint.

19 8.2 Defendants are "persons" within the meaning of RCW 19.86.010(1).

20 8.3 To establish a CPA violation, the Attorney General must prove: (1) an unfair or  
21 deceptive act or practice; (2) that occurs in trade or commerce; and (3) that has a public interest  
22 impact. *See State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2011). Unlike private  
23 litigants, the State is not required to prove causation or injury. *Id.*

24 8.4 An act or practice is deceptive for purposes of the CPA if it has the capacity to  
25 deceive a substantial portion of the public. *See Hangman Ridge Training Stables, Inc. v. Safeco*  
26 *Title Ins. Co.*, 105 Wn.2d 778, 785, 719 P.2d 531 (1986).

1 8.5 Defendants' practice of collecting or attempting to collect on debts allegedly owed  
2 by Washington residents without possessing the required license to do so had the capacity to  
3 deceive those persons and businesses.

4 8.6 Rotech has represented, and as of August 17, 2015, stated on its website that it  
5 "adhere[s] to the strictest industry standards, federal regulations, and nationwide state by state  
6 rules and legislature." These representations create the net impression that Rotech is a licensed  
7 collection agency and that its telephone calls to consumers are communications from a licensed  
8 collection agency.

9 8.7 An act or practice may be unfair if it offends public policy, is unethical,  
10 oppressive, or unscrupulous. *See Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 295 P.3d 1179  
11 (2013).

12 8.8 It is an unfair practice for Defendants to collect or attempt to collect alleged debts  
13 from Washington residents without possessing a license as an out-of-state collection agency or  
14 collection agency.

15 8.9 Defendants' acts occurred in trade or commerce within the meaning of  
16 RCW 19.86.010.

17 8.10 Defendants' unfair and deceptive practices affect the public interest because they  
18 had a uniform practice of collecting or attempted to collecting alleged debts from persons in  
19 Washington without possessing a license as an out-of-state collection agency or as a collection  
20 agency.

21 8.11 The State requests that the Court declare that the acts and practices described  
22 above violate the CPA, and pursuant to RCW 19.86.080(1), enjoin and restrain Defendants from  
23 violating the CPA.

#### 24 **VIII. PRAYER FOR RELIEF**

25 Wherefore, Plaintiff, the State of Washington prays for relief pursuant to each claim for  
26 relief set forth in this Complaint as follows:

1           9.1     That the Court adjudge and declare that each and every attempt by Defendants to  
2 collect a debt and/or alleged debt from persons in Washington, including natural persons,  
3 businesses, or other entities, without a license as an out-of-state collection agency is a violation of  
4 RCW 19.16.110.

5           9.2     That the Court adjudge and declare that Defendants' acts and practices as alleged  
6 herein, are unfair or deceptive acts or practices in trade or commerce, affecting the public interest,  
7 and in violation of the Consumer Protection Act, RCW chapter 19.86.

8           9.3     That the Court issue a permanent injunction prohibiting and restraining  
9 Defendants and their representatives, successors, assigns, officers, agents, servants, employees,  
10 and all other persons acting or claiming to act for on behalf of, or in active concert or participation  
11 with Defendants, from collecting debts and/or alleged debts from any persons in Washington,  
12 including natural persons, businesses, or other entities, without a license to act as a collection  
13 agency or out-of-state collection agency, as required by RCW 19.16.110.

14           9.4     That the Court issue a permanent injunction prohibiting and restraining  
15 Defendants and their representatives, successors, assigns, officers, agents, servants, employees,  
16 and all other persons acting or claiming to act for, on behalf of, or in active concert or  
17 participation with Defendants from charging or receiving any fee or compensation on any moneys  
18 received or collected in connection with collection activity in Washington while operating without  
19 a license, pursuant to RCW 19.16.430.

20           9.5     That the Court assess civil penalties, pursuant to RCW 19.86.140, of two thousand  
21 dollars (\$2,000) per violation against Defendants for each and every violation of RCW 19.86.020,  
22 pursuant to RCW 19.86.140;

23           9.6     That the Court make such orders pursuant to RCW 19.86.080(2) as it deems  
24 appropriate to restore to any business, other entity or person in interest any moneys or property,  
25 real or personal, which may have been acquired by Defendants by means of an act prohibited by  
26 the Consumer Protection Act;

