The Honorable Susan J. Craighead
Noted for March 20, 2020, at 10:00 am
With Oral Argument

STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. US AIR DUCTS & SKY BUILDERS, INC. dba US AIR DUCTS & BUILDERS, a Washington State Corporation; RAMI MORNEL, individually and on behalf of his marital community; DLM SERVICES, INC., a Washington State Corporation; US AIR DUCTS & HVAC LLC, a Washington limited liability company; DAVID MOSHE, individually; and SUSANNA MORNEL, individually and on behalf of her marital community, Defendants.	NO. 19-2-24757-6 SEA [~~PROPOSED~~] ORDER GRANTING STATE'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON LIABILITY AS TO TELEPHONE SOLICITATION PRACTICES

THIS MATTER, having come before the Court on Plaintiff's Motion for Partial Summary Judgment on Liability as to Telephone Solicitation Practices, and the Court having heard the arguments, if any, of the parties, and being familiar with the following material:

1. Plaintiff's Motion for Partial Summary Judgment on Liability as to Telephone Solicitation Practices;
2. Declaration of Mina Shahin and exhibits attached thereto;

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

ORIGINAL

3. Declaration of Eric Peters and exhibits attached thereto;

4. Declaration of Rebecca Hartsock;

5. Declaration of Anton Forbes and exhibits attached thereto;

6. Declaration of Matthew Fong and exhibits attached thereto;

7. Declaration of Tolan Thissell;

8. Declaration of Mary Meyerhoff and exhibits attached thereto;

9. Declaration of Daniel Ruff and exhibits attached thereto;

10. Declaration of Susan Vonrosner and exhibits attached thereto;

11. Declaration of Gary Bennett;

12. Declaration of Barbara Harrison;

13. Declaration of Kristen Huckins;

14. Declaration of Mary Miller;

15. Declaration of George Ormrod;

16. Declaration of Judith Powers;

17. Declaration of Andrew Rickard;

18. Defendant's Opposition and supporting declarations, if any;

19. State of Washington's Reply and supporting declarations, if any;

20. Any other papers or pleadings on file related to the State's Motion for Partial Summary Judgment on Liability as to Telephone Solicitation Practices;

21. _____; and

22. _____.

The Court hereby enters the following FINDINGS and CONCLUSIONS:

1. Defendants Rami Mornel, US Air Ducts & Sky Builders, Inc. (US Air Ducts), and DLM Services, Inc. (DLM) (collectively, Defendants), reside or are located in the State of Washington.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

2. At all times relevant the State's claims in this matter, Rami Mornel was the owner/operator of Defendants US Air Ducts and DLM (collectively, Corporate Defendants).

3. At all times relevant to the State's claims in this matter, Corporate Defendants were engaged in the solicitation and sale of air duct cleaning services to Washington consumers and consumers in other states.

4. At the direction of Rami Mornel, Corporate Defendants solicited consumers using an automatic dialing and answering device (ADAD) to send unsolicited pre-recorded messages offering air duct cleaning services.

5. Corporate Defendants used an ADAD, called Voice Broadcasting (VB), to make unsolicited commercial telephone calls to consumers with telephone numbers on the Federal Trade Commission's Do Not Call Registry (DNC Registry).

6. At the direction of Rami Mornel, Corporate Defendants programmed VB to use various fictitious business name and telephone numbers not registered to any of the Defendant for the caller ID displayed on the call recipient's telephone.

7. Summary judgment "is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." *Michael v. Mosquera-Lacy,* 165 Wn.2d 595, 601, 200 P.3d 695 (2009); CR 56(c).

8. To prevail under the Consumer Protection Act, ch. 19.86 RCW (CPA), the State must prove three elements: (1) an unfair or deceptive act or practice; (2) occurring in trade or commerce; (3) that affects the public interest. *State v. Kaiser*, 161 Wn. App. 705, 719, 254 P.3d 850 (2001); *see also Hangman Ridge Training Stables v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1985). Whether a particular act is unfair or deceptive is a question of law. *Panag v. Farmers Inc. Co. of Washington*, 166 Wn.2d 27, 47, 204 P.3d 885 (2009).

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

9. The Attorney General may bring suit against "any person" to enforce the CPA. RCW 19.86.080. Individuals, including corporate officers, may be personally liable for conduct that violates the CPA if he or she "participate[d] in" or "with knowledge approve[d] of" the practice that violates the CPA. *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 298, 322, 553 P.2d 423 (1976).

10. Washington's Automatic Dialing and Announcing Device Statute (WADAD) prohibits the use of ADADs to make unsolicited calls for the purpose of encouraging a person to purchase goods, services, or property. RCW 80.36.400(1)–(2).

11. Corporate Defendants violated WADAD by using an ADAD to send unsolicited commercial solicitations to Washington consumers. Each violation of WADAD constituted a *per se* violation of the CPA pursuant to RCW 80.36.400(3).

12. In addition, Corporate Defendants violated the CPA by engaging in unfair and deceptive acts or practices within the meaning of RCW 19.86.020 when they (i) initiated unsolicited telephone commercial solicitations to consumers on the DNC Registry; and (ii) used fictitious business names and telephone numbers not registered to Defendants for the caller ID name and telephone number that appeared on consumer recipients' caller ID display.

13. Rami Mornel personally participated in or with knowledge approved of the violations of WADAD and the CPA violations wherein Corporate Defendants used fictitious business names and telephone numbers not registered to Defendants for the caller ID name and telephone number that appeared on consumer recipients' caller ID display. Therefore, Rami Mornel is personally liable for these violations of the CPA.

14. Defendants' acts or practices affected the public interest. Defendants' consistent and repeated robocalling and use of fictitious caller ID information, intruded on the lives of millions of Washington consumers, including hundreds of thousands of consumers who had added their telephone numbers to the DNC Registry.

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

15. Defendants, at all times relevant to this action, were engaged in trade or commerce within the meaning of RCW 19.86.020 by offering and selling air duct cleaning services.

16. Pursuant to RCW 19.86.080, the Court is authorized to enter injunctive relief to prevent Defendants from engaging in the unfair and deceptive acts or practices that this Court has found violated the CPA.

17. The Attorney General is entitled, under the CPA, to request injunctive relief for non-Washington consumers affected by Defendants unfair or deceptive acts or practices. *See Thornell v. Seattle Serv. Bureau, Inc.*, 184 Wn.2d 793, 796, 363 P.3d 587 (2015).

Having made the foregoing findings and conclusions, the Court ORDERS the following:

1. The State's Motion for Partial Summary Judgment on Liability as to Telephone Solicitation Practices is GRANTED.

2. Defendant Rami Mornel, US Air Ducts & Sky Builders, Inc., and DLM Services, Inc., as well as their successors, assigns, officers, agents, employees, representatives, and all other persons in active concert or participation with them, are hereby PERMANENTLY ENJOINED from:

   a. Using, or directing another entity or individual to use, an automatic answering and dialing device (ADAD) to send unsolicited pre-recorded commercial solicitations from any operation located in Washington State, in violation of the Washington Automatic Dialing and Answering Device Statute (WADAD), RCW 80.36.400(2);

   b. Making, or directing another entity or individual to make, an unsolicited call to any telephone number on the federal Do Not Call Registry for purposes of commercial solicitation;

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

c. Using, or directing another entity or individual to use, a telephone number that is not registered to the Defendants for the caller ID display when calling consumers for the purpose of commercial solicitation; and

d. Using, or directing another entity or individual to use, a business name other than the name being used at that time by Defendants to do business for the caller ID display when calling consumers for the purpose of commercial solicitation.

3. Defendant Rami Mornel, US Air Ducts & Sky Builders, Inc., and DLM Services, Inc., as well as their successors, assigns, officers, agents, employees, representatives, and all other persons in active concert or participation with them, are hereby required to take the following measures:

a. Maintain call detail records for any calls made with an ADAD; and

b. Take reasonable steps to create and maintain an internal do not call registry.

4. The Court reserves determination of the civil penalties to be forfeited and paid by Defendants pursuant to RCW 19.86.140 for subsequent proceedings in this matter.

5. The Court reserves determination of the equitable relief to be granted to Washington consumers pursuant to RCW 19.86.080(2) for subsequent proceedings in this matter.

6. The Court reserves determination of an award of costs and reasonable attorneys' fees pursuant to RCW 19.86.080(1) for subsequent proceedings in this matter.

DATED this 29th day of May, 2020.

Susan Craighead

THE HONORABLE SUSAN CRAIGHEAD

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Presented by:
ROBERT W. FERGUSON
Attorney General

Mina Shahin

MINA SHAHIN, WSBA #46661
KATHARINE BARACH, WSBA #51766
DANIEL ALLEN, WSBA #45036
Assistant Attorneys General
Attorneys for Plaintiff State of Washington

ATTORNEY GENERAL OF WASHINGTON
Consumer Protection Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744