

MICHAEL K. JEANES
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----- CASE# CV2016-008528 -----
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9 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

10 **IN AND FOR THE COUNTY OF MARICOPA**

11 STATE OF ARIZONA, ex rel., MARK
12 BRNOVICH, Attorney General,

13 Plaintiff,

14 v.

15 LARMORE AUTO GLASS, LLC, an
16 Arizona limited liability company, d/b/a
17 FREEDOM AUTO GLASS and
18 O'REILLY'S AUTO GLASS,

18 Defendant.

Case No: CV 2016-008528

**COMPLAINT FOR
INJUNCTIVE AND OTHER RELIEF**

(Unclassified Civil)

19
20 For its complaint, Plaintiff, the State of Arizona, *ex rel.* Mark Brnovich, Attorney
21 General (the "State"), alleges as follows:

22 **INTRODUCTION**

23 Defendant Larmore Auto Glass, LLC, d/b/a Freedom Auto Glass and O'Reilly's Auto
24 Glass ("Larmore"), sells windshield repair and replacement services in the State of Arizona
25 and solicits consumers by telephone, directly or through a third party telephone solicitor, for
26 its services. Since at least 2012, Larmore has violated Arizona's laws governing telephone

1 solicitations by repeatedly soliciting consumers who had previously told Larmore – or a
2 telephone solicitor working on its behalf - that they did not want to receive further calls from
3 Larmore; by soliciting consumers whose telephone numbers were on the National Do-Not-
4 Call registry established by the Federal Trade Commission; and by using an artificial or
5 prerecorded message to solicit Arizona consumers in violation of the Arizona Telephone
6 Solicitation Statute (“ATSS”), A.R.S. § 44-1271, *et seq.*

7 Larmore’s violations of the ATSS are, *per se*, unlawful practices under the Arizona
8 Consumer Fraud Act (“ACFA”), A.R.S. §§ 44-1521, *et seq.*, which provides for preliminary
9 and permanent injunctive relief, restitution, disgorgement of ill-gotten gains, civil penalties
10 and costs and fees against persons or entities who engage in unlawful practices. Given
11 Larmore’s numerous violations of the ACFA, it is appropriate that this Court enjoin
12 Larmore, its principals, and its managers from engaging in any of the unlawful acts described
13 in this Complaint, and assess significant civil penalties against Larmore for its willful
14 violations of the ACFA.

15 **JURISDICTION AND VENUE**

16 1. This action is brought pursuant to the ATSS and the ACFA to obtain injunctive
17 relief to prevent the unlawful acts and practices alleged in this Complaint, and other
18 appropriate relief, including restitution, disgorgement of ill-gotten gains, civil penalties, and
19 costs of investigation and attorney’s fees.

20 2. This Court has jurisdiction to enter appropriate orders both prior to and
21 following a determination of liability pursuant to the ACFA.

22 3. Venue is appropriate in Maricopa County, pursuant to A.R.S. § 12-401.

23 **PARTIES**

24 4. Plaintiff is the State of Arizona, *ex rel.* Mark Brnovich, Attorney General, who
25 is authorized to bring this action under the ACFA and ATSS.

26 5. Defendant Larmore is an Arizona limited liability company that sells

1 windshield repair and replacement services in the State of Arizona, and whose principal
2 place of business is in Scottsdale, Arizona.

3 **FACTUAL ALLEGATIONS**

4 6. Since at least 2012, Larmore, using the name O'Reilly's Auto Glass, directly
5 or through a third party telephone solicitor initiated telephone calls to Arizona consumers to
6 provide or arrange to provide windshield repair and replacement services in exchange for
7 payment.

8 7. Since at least 2015, Larmore, under the registered tradename Freedom Auto
9 Glass, directly or through a third party telephone solicitor initiated telephone calls to Arizona
10 consumers to provide or arrange to provide windshield repair and replacement services in
11 exchange for payment.

12 8. Since at least 2012, Larmore, directly or through a third party telephone
13 solicitor initiated telephone calls to Arizona consumers who had previously told it, or
14 solicitors acting on its behalf, that they did not want to receive further telephone calls from
15 the business.

16 9. Since at least 2012, Larmore, directly or through a third party telephone
17 solicitor initiated intrastate telephone calls to telephone numbers in Arizona that were on the
18 National Do-Not-Call registry established by the Federal Trade Commission.

19 10. At all times relevant to this Complaint, neither Larmore nor the telephone
20 solicitors acting on its behalf were exempt from the prohibition in A.R.S. § 44-1282(A)
21 against initiating intrastate telephone solicitations to telephone numbers entered in the
22 National Do-Not-Call registry established by the Federal Trade Commission.

23 11. Since at least 2012, Larmore directly or through a third party telephone
24 solicitor initiated telephone solicitations using an artificial or prerecorded voice to deliver a
25 sales message to Arizona consumers.

26 12. At all times relevant to this Complaint, neither Larmore nor the telephone

1 solicitors acting on its behalf were exempt from the prohibition in A.R.S. § 44-1278(B)(4)
2 against initiating prerecorded calls.

3 **CLAIM FOR RELIEF**

4 **(Telephone Solicitation Statute, A.R.S. §§ 44-1271 – 1282, A.R.S. § 33-2919)**
5 **(Consumer Fraud Act, A.R.S. §§ 44-1521 – 44-1534)**

6 Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth
7 herein.

8 13. Pursuant to A.R.S. § 44-1278(B)(2) of the ATSS, it is unlawful for a seller or
9 solicitor who conducts telephone solicitations in Arizona to directly, or through persons or
10 entities acting on their behalf, initiate telephone calls to Arizona consumers when the
11 consumers have previously stated a desire not to receive telephone calls made by or on
12 behalf of the seller, absent compliance with A.R.S. 44 § 1278(B)(2)(a-d).

13 14. Larmore directly or through persons or entities acting on its behalf repeatedly
14 solicited Arizona consumers to sell windshield repair and replacement services after the
15 solicited consumers had stated a desire not to receive telephone calls from Freedom Auto
16 Glass and/or O'Reilly's Auto Glass without having complied with A.R.S. § 44-
17 1278(B)(2)(a-d).

18 15. Larmore's violations of A.R.S § 44-1278(B)(2) are, *per se*, violations of the
19 ACFA, pursuant to A.R.S. § 44-1278(B).

20 16. Pursuant to A.R.S. § 44-1282(C) of the ATSS, it is an unlawful practice for a
21 seller or solicitor to directly, or through persons or entities acting on their behalf, initiate
22 intrastate calls to telephone numbers entered in the National Do-Not-Call registry established
23 by the Federal Trade Commission, with limited exceptions; none of which applied to
24 Larmore or solicitors acting on its behalf at any time relevant to this Complaint.

25 17. Larmore directly, or through persons or entities acting on its behalf, and
26 repeatedly initiated telephone calls to Arizona consumers whose numbers were already

1 entered in the National Do-Not-Call registry, in violation of A.R.S. § 44-1282.

2 18. Larmore's violations of A.R.S. § 44-1282 are, *per se*, violations of the ACFA,
3 pursuant to A.R.S. § 44-1282(C).

4 19. Pursuant to A.R.S. § 44-1278(B)(4), part of the ATSS, it is unlawful for a
5 seller or solicitor who conducts telephone solicitations in Arizona to directly, or through
6 persons or entities acting on their behalf, make telephone calls to Arizona consumers using
7 an artificial or prerecorded voice to deliver a message, with limited exceptions; none of
8 which applied to Larmore or solicitors acting on its behalf at any time relevant to this
9 Complaint.

10 20. Larmore's violations of A.R.S. § 44-1282 are, *per se*, violations of the ACFA,
11 pursuant to A.R.S. § 44-1282(C).

12 21. At all times relevant to this Complaint, Larmore acted "willfully," as defined in
13 A.R.S. § 44-1531.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff respectfully requests that the Court:

16 22. Enjoin the Defendant Larmore, d/b/a Freedom Auto Glass and O'Reilly Auto
17 Glass, its officers, agents, servants, employees, and attorneys, or any successor entity or
18 entities, whether by acquisition, merger or otherwise, from engaging in the unlawful acts and
19 practices alleged in this Complaint, and from doing any acts in furtherance of such acts and
20 practices, pursuant to A.R.S. §§ 44-1528;

21 23. Order Defendant Larmore, d/b/a Freedom Auto Glass and O'Reilly Auto
22 Glass, to pay to the State of Arizona a civil penalty of no more than \$10,000 for each willful
23 violation of A.R.S. § 44-1278(B)(2), pursuant to A.R.S. § 44-1531;

24 24. Order Defendant Larmore, d/b/a Freedom Auto Glass and O'Reilly Auto
25 Glass, to pay to the State of Arizona a civil penalty of no more than \$1,000 for each willful
26 violation of A.R.S. § 44-1282, pursuant to A.R.S. § 44-1282(C);

