CHRIS DEROSE Clerk of the Superior Court By Ashley Hatch, Deputy Date 09/18/2018 Time 15:27:23 Description ----- CASE# CV2018-011348 --CIVIL NEW COMPLAINT 333.00 W **MARK BRNOVICH** 1 TOTAL AMOUNT 0.00 ATTORNEY GENERAL Receipt# 26806933 (Firm Bar No. 14000) 2 BRYCE N. CLARK (Bar No. 034080) 3 **ASSISTANT ATTORNEY GENERAL** 2005 N. Central Ave. 4 Phoenix, Arizona 85004 5 Telephone: (602) 542-3702 Facsimile: (602) 542-4377 6 Consumer@azag.gov Attorneys for State of Arizona 7 8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA 9 IN AND FOR THE COUNTY OF MARICOPA 10 11 CV2018-011348 STATE OF ARIZONA, ex rel. 12 MARK BRNOVICH, Attorney General, Case No: 13 Plaintiff, 14 **CIVIL COMPLAINT FOR INJUNCTIVE** 15 v. AND OTHER RELIEF 16 ORANGUTAN HOME SERVICES, INC., an **Arizona Corporation** (Non-classified: Consumer Fraud) 17 18 Defendant. 19 Plaintiff, the State of Arizona, ex rel. Mark Brnovich, the Attorney General ("the State") 20 alleges as follows: 21 22 JURISDICTION AND VENUE 23 24 This action is brought pursuant to the Arizona Telephone Solicitation Statutes 1. 25 ("ATSS"), Arizona Revised Statute ("A.R.S.") §§ 44–1271 et seq., and the Arizona Consumer 26

Fraud Act ("CFA"), A.R.S. §§ 44–1521 *et seq.*, to obtain injunctive relief to prevent the unlawful acts and practices alleged in this Complaint, and other appropriate relief, including restitution, disgorgement, civil penalties, and costs of investigation and attorney's fees.

- 2. This Court has jurisdiction to enter appropriate orders both prior to and following a determination of liability under the CFA, pursuant to A.R.S. § 44–1528.
  - 3. Venue is appropriate in Maricopa County, pursuant to A.R.S. § 12–401.

## **PARTIES**

- 4. Plaintiff is the State of Arizona, *ex rel*. Mark Brnovich, Attorney General, who is authorized to bring this action under the CFA and ATSS.
- 5. Defendant Orangutan Home Services, Inc. ("Orangutan") is an Arizona corporation that sells air conditioning units and performs maintenance services on heating and air conditioning systems in the State of Arizona and whose principal place of business is in Tempe, Arizona.

## **FACTUAL ALLEGATIONS**

- 6. From approximately April 2017 to October 2017, Orangutan employees initiated phone calls from an office located at 2922 S Roosevelt St, Tempe, AZ 85282, to Arizona consumers offering to provide or arrange to provide residential HVAC maintenance services to Arizona consumers in exchange for payment.
- 7. From approximately April 2017 to October of 2017, Orangutan initiated thousands of intrastate telephone solicitations to Arizona telephone numbers registered on the Do Not Call

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## **CLAIMS FOR RELIEF**

- I. **VIOLATIONS OF A.R.S. § 44 – 1278(B)(6) – "DO NOT CALL" LIST** VIOLATIONS OF THE TELEMARKETING SALES RULE
- 8. Plaintiff re-alleges the prior allegations of this Complaint as though fully set forth herein.
- 9. 16 CFR § 310.4(b) prohibits a seller or solicitor from initiating any outbound telephone call to a person if that person's telephone number is on the federal "Do Not Call" Registry of persons who do not wish to receive outbound telephone solicitations.
- 10. From April of 2017 to October 2017, Orangutan, from its office in Tempe, initiated thousands of intrastate telephone calls to Arizona consumers whose numbers were registered on the federal Do Not Call Registry, in violation of 16 CFR § 310.4(b)(1)(iii)(B).
- Orangutan's violations of 16 CFR § 310.4(b)(1)(iii)(B) are per se violations of the 11. CFA, pursuant to A.R.S. § 44–1278(B).
- 12. At all times relevant to this Complaint, Orangutan knew or should have known that its actions described in ¶ 10 were of the nature prohibited by the CFA, and Orangutan acted "willfully" as defined in A.R.S. § 44–1531(B).

## PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

13. Permanently enjoin Orangutan, its officers, agents, servants, and employees, or any successor entity or entities, whether by acquisition, merger or otherwise, from:

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- a. Engaging in the unlawful acts and practices alleged in this Complaint, and from doing any acts in furtherance of such acts and practices, pursuant to A.R.S. § 44–1528; and
  - b. Initiating telephone solicitations as defined in A.R.S. § 44–1271(18);
- 14. Order Orangutan to disgorge and pay the State of Arizona any profits, gain, gross receipts or other benefit obtained by any practice in violation of A.R.S. §§ 44–1278, pursuant to A.R.S. § 44–1528;
- 15. Order Orangutan to pay the State of Arizona a civil penalty of no more than \$1,000 for each willful violation of A.R.S. § 44–1278, pursuant to A.R.S. § 44–1531;
- 16. Order Orangutan to pay the State of Arizona its costs of investigation and prosecution, including reasonable attorneys' fees, pursuant to A.R.S. § 44–1534 and A.R.S. § 44–1282(B); and
- 17. Order such other and further relief as the Court deems just and proper. RESPECTFULLY SUBMITTED: September 17, 2018.

MARK BRNOVICH, ATTORNEY GENERAL

BY: 2

Bryce N. Clark

Assistant Attorney General

Attorneys for the State of Arizona