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12 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
13 **IN AND FOR THE COUNTY OF MARICOPA**

14 STATE OF ARIZONA, *ex rel.* MARK
15 BRNOVICH, Attorney General,

16 Plaintiff,

17 vs.

18 MARK ANTHONY SMITH and DEBORAH
19 ANN BUTLER, individually and as husband
20 and wife, d/b/a CMS FINANCIAL GROUP,
21 JOHN LEE GROUP & ASSOCIATES, and
22 TD FINANCIAL SOLUTIONS GROUP AZ,

23 Defendants.

Case No: CV2020-011728

**COMPLAINT FOR INJUNCTIVE AND
OTHER RELIEF**

(Non-classified Civil; Consumer Fraud)

(Jury Trial Demanded)

24 Plaintiff, State of Arizona *ex rel.* Mark Brnovich, the Attorney General (the “State”),
25 alleges the following for its Complaint against defendants Mark Anthony Smith and Deborah
26 Ann Butler, d/b/a CMS Financial Group, John Lee Group & Associates, and TD Financial
Solutions Group AZ (collectively “Defendants”).

1 **JURISDICTION AND VENUE**

2 1. This action is brought pursuant to the Arizona Consumer Fraud Act, Arizona
3 Revised Statutes (“A.R.S.”) §§ 44-1521 to 44-1534, (the “CFA”) to obtain injunctive relief to
4 permanently enjoin and prevent the unlawful acts and practices alleged in this Complaint, and
5 to obtain other relief, including restitution, disgorgement of profits, gains, gross receipts, or
6 other benefits, civil penalties, and costs and attorneys’ fees.

7 2. This Court has subject-matter jurisdiction.

8 3. This Court may issue appropriate orders both prior to and following a
9 determination of liability pursuant to A.R.S. § 44-1528.

10 4. Defendants caused events to occur in this state out of which the claims which are
11 the subject of this Complaint arose.

12 5. Venue is proper in Maricopa County pursuant to A.R.S. § 12-401(17).

13 **PARTIES**

14 6. The State is authorized to bring this action under the CFA.

15 7. Defendant Mark Anthony Smith (“Defendant Smith”) is a resident of Maricopa
16 County, Arizona. Defendant Smith is an owner, the Chief Executive Officer, and the manager
17 of Arizona debt collection businesses that operated under the registered trade names of CMS
18 Financial Group, John Lee Group and Associates, and TD Financial Solutions Group AZ.

19 8. At all times material and relevant to this Complaint, Defendant Smith directed,
20 managed, and controlled the affairs of CMS Financial Group, John Lee Group and Associates,
21 and TD Financial Solutions Group AZ.

22 9. Defendant Deborah Ann Butler (“Defendant Butler”) is a resident of Maricopa
23 County, Arizona. Defendant Butler registered and owns the trade names CMS Financial
24 Group, John Lee Group and Associates, and TD Financial Solutions Group AZ. Defendant
25 Butler is the Chief Financial Officer, opens bank accounts, trains administrative and secretarial
26 employees, distributes payroll, receives payments, and makes financial deposits for the

1 businesses.

2 10. As the owner and Chief Financial Officer of CMS Financial Group, John Lee
3 Group and Associates, and TD Financial Solutions Group AZ, Deborah Butler, with actual
4 and/or constructive knowledge, approved, endorsed, directed, ratified, controlled, or otherwise
5 participated in the illegal acts and practices alleged herein.

6 11. Defendant Smith acted on behalf of his sole and separate property.

7 12. Defendant Butler acted on behalf of her sole and separate property.

8 13. Defendant Smith and Defendant Butler have been husband and wife since July
9 20, 2019. Since July 20, 2019, Defendant Smith and Defendant Butler acted for and on behalf
10 of their marital community as well as their sole and separate property.

11 14. Defendant Smith and Defendant Butler are sued jointly pursuant to A.R.S. § 25-
12 215 to establish the liability of the marital community for the violations alleged herein
13 occurring prior to July 20, 2019.

14 15. At all times material and relevant to this Complaint, any reference to acts and
15 practices of Defendants shall mean that such acts and practices were by and through the acts
16 and practices of CMS Financial Group's, John Lee Group and Associates', and TD Financial
17 Solutions Group AZ's owners, officers, employees, representatives, and/or other agents.

18 16. Defendants operated through the trade name CMS Financial Group in Phoenix,
19 Arizona from approximately October 21, 2015 until the date of this Complaint.

20 17. Defendants operated through the trade name John Lee Group and Associates in
21 Phoenix, Arizona from approximately April 5, 2016 until May 2017.

22 18. Defendants operated through the trade name TD Financial Solutions Group AZ in
23 Phoenix, Arizona from approximately April 15, 2016 until June 2017.

24 **DEFENDANTS' BUSINESS PRACTICES**

25 19. At all times relevant to this action, Defendants have engaged in consumer debt
26 collection services by regularly collecting or attempting to collect from consumers debts that

1 Defendants allege to be due.

2 20. Defendants regularly attempt to collect on alleged debts by placing telephone
3 calls from Arizona to alleged consumer debtors nationwide.

4 21. In many cases, Defendants do not have ownership of the debt or the right to
5 collect the debt they collect or attempt to collect from consumers.

6 22. Although the State has demanded that Defendants provide proof of their
7 ownership of the debt or authority to collect the debt, Defendants have been unable or
8 unwilling to do so.

9 23. Defendants collect or attempt to collect debts allegedly owed by consumers by
10 making false or misleading statements, including representations that a civil or criminal action
11 has been filed or is imminent, and will result in adverse consequences, including arrest and
12 incarceration, unless consumers promptly pay Defendants or otherwise cooperate with
13 Defendants' collection efforts.

14 24. Defendants falsely represent themselves on debt collection calls as law
15 enforcement officers, government officials, and process servers in order to scare or intimidate
16 consumers into paying debts that are allegedly owed.

17 25. Defendants frequently use call spoofing software for their collection calls to
18 reinforce their claims that they are law enforcement officers, government officials, or process
19 servers by making it appear as though calls originate from courthouses, sheriffs' offices, jails,
20 or other public offices.

21 26. When Defendants use call spoofing software for collection calls, Defendants
22 typically spoof fax numbers at various public offices, which makes it more difficult for
23 consumers to use caller ID to verify who called.

24 27. Between January 1, 2016 and May 26, 2020, Defendants used call spoofing
25 software to make approximately 65,808 calls to consumers. At least 3,174 of those calls used
26 the spoofing software to make the calls appear to originate from local courthouses, law

1 enforcement offices, or other public offices.

2 28. Defendants, while impersonating law enforcement officers or process servers, call
3 and leave voicemails for consumers in which they attempt to convince consumers that civil
4 legal actions have been initiated against them by providing case numbers and making
5 statements such as that consumers have an “SC 100 Summons and Complaint,” are being
6 “summoned” to court, and/or need to be “served.”

7 29. In Defendants’ voicemails impersonating law enforcement officers or process
8 servers, Defendants create a false sense of urgency for consumers to return their calls by
9 making false claims such as saying that this is a “time sensitive” or “urgent” situation, that
10 consumers could have an “FTA” or “Failure to Appear,” that consumers could be found in
11 “contempt of court,” and/or that legal actions will continue without the consumers’
12 participation if consumers do not respond quickly and call the phone number Defendants leave
13 on the voicemails.

14 30. In Defendants’ voicemails impersonating law enforcement officers and process
15 servers, Defendants often make false threats that they are going to go out to consumers’ “POE”
16 or “place of employment” to serve consumers with court papers if they do not return
17 Defendants’ calls.

18 31. For example, Defendants left the following voicemail for one consumer:

19 Hello, this is Officer Anderson out of Orange County. I am trying to
20 reach a [consumer’s name]. I have an SC 100, which is a Summons
21 and Complaint that we have been trying to get a hold of you on.
22 Now I am not quite sure what has taken place here, but it appears
23 that dispatch has made several attempts to get a hold of you, but they
24 have been unsuccessful. Listen, at this point in time, we are trying
25 to make sure you don’t receive an FTA, which is a failure to appear
26 and be held in contempt of court. So, I do have a number to the
issuing agency. The number is 833-277-4484. There is a case
number associated with this. That case number is C as in Charlie; V
as in Victor 0200-0139. Again, I would make contact with these
folks immediately. If in fact my lieutenant gives me further

1 instructions here shortly that you are still not in compliance—
2 unfortunately, umm Mr. [consumer's name], we are going to have to
3 serve you at your place of employment. We are trying to avoid any
4 embarrassment or we are trying to make sure that you do receive
5 these documents. Thank you.

6 32. While impersonating law enforcement, Defendants call consumers' family
7 members and employers regarding consumers' alleged debts. During these calls, Defendants
8 recite badge numbers to substantiate their claims that they are law enforcement; tell people they
9 call that the consumers have a criminal or civil case, and/or notify people that the consumers
10 will be arrested if Defendants do not hear back from them.

11 33. When consumers speak to Defendants, Defendants have consumers' personal
12 information, such as the last four digits of consumers' social security numbers, old addresses,
13 and drivers' license numbers, which Defendants use in order to misrepresent their authority to
14 collect debts from consumers.

15 34. When Defendants are not pretending to be law enforcement, Defendants typically
16 expressly claim to be or imply that they are attorneys, employed by attorneys, or calling on
17 behalf of an attorney or law firm.

18 35. Defendants expressly claim to be or imply that they are attorneys or associated
19 with attorneys or law firms by making representations such as calling themselves the "litigation
20 department," the "director of litigation," head of the "legal team," the "litigation manager," a
21 "lawyer," a "paralegal," or referring to themselves as "CMS Legal Group" or "CMS Law
22 Office."

23 36. For example, Defendants left a second voicemail for the consumer that received
24 the voicemail in paragraph 31 saying the following:

25 Uh [consumer name], this is Patrick Stevens with CMS Law Office.
26 I spoke with you yesterday. I spoke with you regarding the revised
payment arrangement for the 250 today. We haven't heard from you
with the tracking numbers so go ahead and give me a call back as
soon as you get the message here. The number is 833-277-4484 and

1 my extension is 135. I'll hold the case for an hour. Go ahead and
2 give me a call back. Unfortunately, if not, we will have to go ahead
3 and have you served and move forward with due process. Thank
4 you.

5 37. Defendants are not a law firm and do not work with, on behalf of, or refer matters
6 to attorneys or law firms for their debt collection activities.

7 38. Defendants use the threat of lawsuits to intimidate consumers into paying
8 Defendants for alleged debts.

9 39. Defendants have no authority to institute legal actions and have never brought a
10 lawsuit against a consumer for failing to pay a debt.

11 40. Defendants misrepresent that if consumers do not immediately pay Defendants
12 the amounts allegedly due or the amounts for which Defendants offer to settle, consumers will
13 be required to pay substantially greater sums of money for court costs and attorneys' fees.

14 41. Despite the fact that Defendants have no authority to do so, Defendants threaten
15 to file lawsuits; serve summonses; garnish wages and tax returns; place liens on house and car
16 titles; freeze bank accounts; file to have consumers' drivers licenses suspended; send out law
17 enforcement to consumers' houses, their relatives' houses, and/or place of employment; and/or
18 have consumers arrested if consumers do not immediately pay Defendants the alleged debts
19 owed or amounts demanded by Defendants.

20 42. In many instances, when consumers request that Defendants provide a
21 verification of the debt, which Defendants are required to do pursuant to 15 U.S. Code
22 § 1692(g), Defendants tell consumers that they must pay Defendants before Defendants will
23 verify the debts.

24 43. Despite the fact that none of Defendants' businesses are law firms or associated
25 with law firms, Defendants send consumers correspondence that includes an email address of
26 admin@cmslegalgroup.com in the letterhead to imply that consumers are entering into an
agreement with a law firm.

1 44. After convincing consumers to either pay alleged debts in full or “settle” alleged
2 debts for a lower amount and/or with a payment plan, Defendants typically email consumers a
3 document that they require consumers to electronically sign (“Settlement Agreement”). The
4 following is a sample Settlement Agreement:

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6 EMAIL | ADMIN@CMSLEGALGROUP.COM | PHONE | 602.666.9988 | FAX 855.710.7672
1241 EAST WASHINGTON ST, STE 102 PHOENIX, AZ 85034

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6/12/2019

Original Creditor: PURCHASING POWER LLC
Original Account: [REDACTED]
Tax Payer ID/ SSN: XXX-XX-XXXX
Case Number: 2018-155844
Balance In Full: \$6,189.25
Settlement Offer: \$2,500.00

We thank you for the agreement you have entered within our office to meet your obligations in regards to the Account Claim 2018-155844. If arrangements for the prompt payment of this debt are not made on the agreed upon date, we will proceed to file suit against you in your current county. Should any payment be received more than 1 day late, we reserve the right to move forward with suit for the balance owing plus court costs and reasonable attorney's fees.

Upon successful payment of the compromised amount, CMS Financial agrees to modify any negative information that may have been placed on the debtor's credit report. Finalized payment of this account will end your obligation for the above referenced debt and a release of liability letter will be issued for your records. Thank you for cooperation herein.

Your payment options are as follows:

Overnight (next Day delivery) USPS Money Order or Cashier's Check mailed to:

CMS Financial
3145 E Chandler Blvd, Ste. 110 - #438
Phoenix, AZ 85048

Payment(s) as follows:

6/13/19	\$500.00
6/14/19	\$500.00
7/26/19	\$750.00
8/30/19	\$750.00

Money Order Serial #: NA

Carrier Tracking #: NA

Estimated Date of Delivery: 6-14-19

Please sign this Authorization for our records to validate your settlement agreement.

Signature: _____ Date: 12 / 06 / 2019

Phone Number: _____

Doc ID: 8a484a0d8b4f50bd9aa12008bac11b92ac1153

1 45. Defendants have no legal authority or intention to institute legal actions;
2 nevertheless, Defendants' Settlement Agreement represents that "[i]f arrangements for the
3 prompt payment of this debt are not made on the agreed upon date, we will proceed to file suit
4 against you in your current county. Should any payment be received more than 1 day late, we
5 reserve the right to move forward with suit for the balance owing plus court costs and
6 reasonable attorney's fees."

7 46. Defendants' Settlement Agreement states that, "[u]pon successful payment of the
8 compromised amount, CMS Financial agrees to modify any negative information that may have
9 been placed on the debtor's credit report"; however, Defendants do not report to credit agencies
10 when consumers pay money to them and do not have the ability or authority to modify any
11 negative information that may have been placed on a debtor's credit report.

12 47. Even though Defendants, in many cases, do not have ownership of the debts or
13 the right to collect the debts, Defendants' Settlement Agreement states that "[f]inalized
14 payment of this account will end your obligation for the above referenced debt."

15 48. Defendants have reaped considerable profits from their combination of aggressive
16 misrepresentations and unsubstantiated or false claims that consumers owe debts. Since
17 October 2015, Defendants have processed and collected at least \$1,627,058.49 in consumer
18 payments.

19 **DEMAND FOR JURY TRIAL**

20 49. The State requests a jury trial on all issues triable by jury, pursuant to Ariz. R. Civ.
21 P. 38.

22 **CLAIMS FOR RELIEF**

23 **Violations of the Arizona Consumer Fraud Act (A.R.S. §§ 44-1521 to 44-1534)**

24 50. The State re-alleges and incorporates by reference the prior allegations of this
25 Complaint as though fully set forth herein.

26 ///

1 51. As alleged above, in the conduct of their debt collection business, Defendants
2 violate the Arizona Consumer Fraud Act, A.R.S. §§ 44-1522 to 44-1574, by engaging in the
3 act, use or employment of deception, deceptive or unfair acts or practices, fraud, false pretense,
4 false promise, misrepresentation, or concealment, suppression, or omission of any material fact
5 with intent that others rely on such concealment, suppression, or omission, in connection with
6 the sale of debt elimination services, by committing acts, including, but not limited to:

- 7 a. Misrepresenting that Defendants own the debts or have authorization to collect
8 the debts from consumers;
- 9 b. Concealing, suppressing, or omitting the material facts that Defendants do not
10 own the debts or have authorization to collect the debts from consumers, and
11 doing so with the intent that others rely on such concealment, suppression, or
12 omissions;
- 13 c. Misrepresenting that a civil lawsuit or criminal action has been filed or is
14 imminent and will result in adverse consequences unless consumers promptly pay
15 Defendants or otherwise cooperate with Defendants' collection efforts;
- 16 d. Concealing, suppressing, or omitting the material facts that Defendants do not
17 have authorization to file and have never filed civil lawsuits or criminal actions
18 against consumers for failure to pay a debt, and doing so with the intent that
19 others rely on such concealment, suppression, or omissions;
- 20 e. Misrepresenting that Defendants are law enforcement officers, government
21 officials, and process servers;
- 22 f. Concealing, suppressing, or omitting the material facts that Defendants are not
23 law enforcement officers, government officials, or process servers, and doing so
24 with the intent that others rely on such concealment, suppression, or omissions;
- 25 g. Misrepresenting the origin of Defendants' calls by using spoofing software for
26 calls;

- 1 h. Concealing, suppressing, or omitting the material facts that Defendants are not
2 calling from courthouses, law enforcement offices, or other public offices, and
3 doing so with the intent that others rely on such concealment, suppression, or
4 omissions;
- 5 i. Misrepresenting that Defendants intend to seize, garnish, or attach the consumers’
6 property or wages;
- 7 j. Concealing, suppressing, or omitting the material facts that Defendants do not
8 have the authority to seize, garnish, or attach consumers’ property or wages, and
9 doing so with the intent that others rely on such concealment, suppression, or
10 omissions;
- 11 k. Misrepresenting that consumers will be arrested if they do not pay alleged debts
12 to Defendants;
- 13 l. Concealing, suppressing, or omitting the material facts that Defendants do not
14 have the authority to arrest consumers for failure to pay alleged debts, and doing
15 so with the intent that others rely on such concealment, suppression, or omissions;
- 16 m. Misrepresenting expressly or by implication that Defendants are attorneys or
17 employed by attorneys or working with an attorney or law firm;
- 18 n. Concealing, suppressing, or omitting the material facts that Defendants
19 are not attorneys, law firms, or working with law firms, and doing so with the
20 intent that others rely on such concealment, suppression, or omissions;
- 21 o. Misrepresenting to consumers that Defendants will “modify any negative
22 information that may have been placed” on the consumer’s credit report when
23 Defendants do not actually report debt payments to credit reporting agencies;
- 24 p. Concealing, suppressing, or omitting the material facts that Defendants
25 do not report debt payments to credit reporting agencies and cannot “modify any
26 negative information that may have been placed” on consumers’ credit reports,

1 and doing so with the intent that others rely on such concealment, suppression, or
2 omissions;

3 q. Misrepresenting to consumers that Defendants have the authority to release
4 consumers' liability for debt; and

5 r. Concealing, suppressing, or omitting the material facts that Defendants
6 do not have the authority to release consumers' liability for debt, and doing so
7 with the intent that others rely on such concealment, suppression, or omissions.

8 52. Defendants' acts and practices set forth above were willful, as defined by A.R.S.
9 § 44-1531(B), as Defendants knew or should have known that their conduct was of the nature
10 prohibited by A.R.S. § 44-1522.

11 **RELIEF REQUESTED**

12 WHEREFORE, the State respectfully requests that the Court:

13 1. Pursuant to A.R.S. § 44-1528(A)(1), issue a permanent injunction, enjoining and
14 restraining (a) Defendants, (b) their officers, agents, servants, employees, attorneys, and (c) all
15 persons in active concert or participation with anyone described in part (a) or (b) of this
16 paragraph, directly or indirectly, from engaging in deceptive, misleading, or unfair acts or
17 practices, or concealments, suppressions, or omissions, that violate the CFA, A.R.S. § 44-
18 1522(A);

19 2. Pursuant to A.R.S. § 44-1528(A)(2), order Defendants to restore to all persons
20 any money or property, real or personal, that may have been acquired by means of any unlawful
21 acts or practice as alleged in this Complaint in an amount of at least \$1,627,058.49;

22 3. Pursuant to A.R.S. § 44-1528(A)(3), order Defendants to disgorge any profits,
23 gain, gross receipts, or other benefits obtained as a result of any unlawful acts or practices as
24 alleged in this Complaint;

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