

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

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ATTORNEY GENERAL OF OHIO

AUG 01 2016

STATE OF OHIO, ex rel.
ATTORNEY GENERAL
MICHAEL DEWINE

Plaintiff,

v.

ROTECH HOLDINGS LTD. et al.

Defendants.

) Case No. 15 CV 009736

) JUDGE SCHNEIDER

CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

) **AGREED CONSENT JUDGMENT**
) **ENTRY AND ORDER**

PREAMBLE

This matter came to be heard upon the filing of a complaint on October 30, 2015 by the Ohio Attorney General on behalf of the State ("State" or "Plaintiff") alleging that Defendants Rotech Holdings, Ltd., doing business as RH Group, and Sean M. Lista and Glenn R. Lista, individually and doing business as Rotech Holdings, Ltd. and RH Group ("Defendants"), have violated the Ohio Consumer Sales Practices Act ("CSPA"), R.C. 1345.01 et seq., its Substantive Rules, and the Fair Debt Collections Practices Act ("FDCPA"), 15 U.S.C. 1692, et seq. By signing this Agreed Consent Judgment Entry and Order ("Consent Judgment"), Defendants submit to the personal jurisdiction of this Court, consent to the entry of this Consent Judgment pursuant to R.C. 1345.07(F), consent to the Court's findings of fact and conclusions of law, and consent to the rights of Plaintiff to enforce this Consent Judgment. Defendants further waive any and all appeal rights they may have.

FINDING OF FACTS

1. Defendant Rotech Holdings, Ltd. ("Rotech") is a New York Corporation whose principal place of business is located at 50 Alcona Avenue, Amherst, New York, 14226.

2. Defendant Rotech was never registered as a foreign corporation with the Ohio Secretary of State.
3. Defendant Sean M. Lista is a natural person who resides at 10505 Bergtold Road, Clarence, New York, 14031-2104.
4. Defendant Glenn R. Lista is a natural person who resides at 4760 Harris Hill Road, Buffalo, New York, 14221-6228.
5. Defendant Sean M. Lista directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices of Rotech.
6. Defendant Glenn R. Lista directed, supervised, approved, formulated, authorized, ratified, benefited from, and/or otherwise participated in the acts and practices of Rotech.
7. Defendants purchased alleged debts and engaged in the practice of debt collection by regularly collecting or attempting to collect from consumers debts that were due or alleged to be due.
8. Defendants did business in Ohio using the unregistered fictitious business names RH Group and RTH Group.
9. Defendants misrepresented to consumers that Rotech's principal place of business is located in the state of Washington.
10. Defendants attempted to collect on alleged debts by placing telephone calls to alleged consumer debtors.
11. In many cases, consumers had never owed the debts the Defendants were attempting to collect or had previously paid off the debts.
12. Defendants engaged in conduct that was harassing or abusive to consumers in an effort to intimidate consumers into paying debts allegedly owed.

13. During telephone calls to consumers, Defendants used abusive or profane language in connection with the collection of debts.
14. Defendants collected or attempted to collect debts allegedly owed by consumers by making false or misleading statements, including representations that a civil or criminal action was imminent, if consumers failed to pay a debt immediately.
15. Defendants told consumers that they had been “served” and/or instructed consumers to contact the “plaintiff” as a way to misrepresent to consumers that a civil legal action had been initiated.
16. Defendants threatened actions against consumers when there was no legal authority or intention to do so, including representing that subpoenas or summonses would be issued and that consumers would be arrested or jailed if the consumers did not pay the alleged debts.
17. Defendants contacted consumers repeatedly or continuously by telephone to collect an alleged debt, even after the consumers advised Defendants that they were not the persons who owed the alleged debts and they did not know the persons who Defendants were trying to contact.
18. Defendants continued to place telephone calls to consumers’ places of employment after consumers or representatives of the consumers’ employers instructed Defendants to cease calling those telephone numbers.
19. Defendants communicated with persons other than the consumers—including the consumers’ employers, co-workers, or family members—regarding the consumers’ debts, without the prior consent of the consumers.

20. Defendants used harassing, abusive, or threatening language when communicating with third parties—including the consumers’ employers, co-workers, or family members—about consumers’ debts.

CONCLUSIONS OF LAW

21. The actions of Defendants have occurred in the state of Ohio, in Franklin County and other counties, and are in violation of the CSPA, R.C. 1345.01 et seq., and the FDCPA, 15 U.S.C. 1692 - 1692(p).
22. The State of Ohio, through Attorney General Michael DeWine, brought this action in the public interest and in behalf of the State of Ohio under the authority vested in the Attorney General by R.C. 1345.07
23. This Court has venue to hear this case pursuant to Ohio Civ. R. 3(B)(3), in that some of the transactions complained of herein, and out of which this action arose, occurred in Franklin County.
24. Jurisdiction over the subject matter of this action lies with this Court pursuant to R.C. 1345.04 of the CSPA.
25. Defendants are “suppliers” as that term is defined in R.C. 1345.01(C) of the CSPA as Defendants have, at all times relevant herein, engaged in the business of effecting consumer transactions either directly or indirectly by enforcing or attempting to enforce the payment of debts allegedly owed by consumers, which arose from consumer transactions for primarily personal, family, or household purposes within the meaning specified in R.C. 1345.01(A) and (D), in Franklin County and other counties in the state of Ohio.

26. Defendants are “debt collectors” as that term is defined in 15 U.S.C. 1692(a)(6) of the FDCPA as Defendants have, at all times relevant herein, used an instrumentality of interstate commerce or the mail in any business the principal purpose of which is the collection of any debts, as defined by 15 U.S.C. 1692(a)(5), or regularly collected or attempted to collect, directly or indirectly, debts owed or due or asserted to be owed or due another, from individuals in Franklin County and other counties in the state of Ohio and throughout the United States.
27. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by using debt collection methods that violated the FDCPA, 15 U.S.C. 1692 – 1692p.
28. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by engaging in conduct the natural consequence of which is to harass, oppress, or abuse in connection with the collection of a debt.
29. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by using abusive or profane language during telephone calls in connection with the collection of debts.
30. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by contacting consumers repeatedly or continuously by telephone to collect alleged debts after the consumers advised Defendants that they were not the persons who owed the alleged debts and they did not know the persons who Defendants were trying to contact.

31. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by communicating with consumers in the collection of debts at the consumers' places of employment when the Defendants knew or had reason to know that the consumers' employers prohibited the consumers from receiving such communications.
32. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by calling third parties more than once after the third parties provided location information for consumers or indicated that they did not have the location information being sought.
33. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by communicating with persons other than the consumers—including the consumers' employers, co-workers, or family members—in the collection of debts, without the prior consent of the consumers.
34. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by using harassing, abusive, and threatening language when communicating with third parties—including the consumers' employers, co-workers, or family members—about consumers' debts.
35. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and 1345.03(A), by making false, misleading, or deceptive representations in connection with the collection of a debt.
36. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and R.C. 1345.03(A), by attempting to collect

debts by threatening actions against consumers when Defendants had no legal authority or intention to take such actions.

37. Defendants committed unfair, deceptive, and unconscionable acts and practices in violation of the CSPA, R.C. 1345.02(A) and 1345.03(A), by representing or implying that nonpayment of debts would result in the arrest or filing of criminal or civil actions when such actions were not lawful or the Defendants did not intend to take such action.

ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- A. The Court hereby DECLARES that the acts and practices described in the Plaintiff's Complaint, and above in the Findings of Fact and Conclusions of Law, violate the CSPA, R.C. 1345.01 et seq., its Substantive Rules, and the FDCPA, 15 U.S.C. 1692 – 1692(p), in the manner set forth in this Consent Judgment.
- B. Defendants, doing business under their own names, as Rotech Holdings, Ltd., RH Group, or RTH Group, or using any other names, their agents, partners, representatives, employees, successors, and assigns, and all persons acting in concert or participation with them, directly or indirectly, are hereby PERMANENTLY ENJOINED from committing any unfair, deceptive, or unconscionable act or practice that violates the CSPA, R.C. 1345.01 et seq., or the FDCPA, 15 U.S.C. 1692 – 1692(p).
- C. Defendants, doing business under their own names, as Rotech Holdings, Ltd., RH Group, or RTH Group, or using any other names, their agents, partners, representatives, employees, successors, and assigns, and all persons acting in concert or participation with them, directly or indirectly, are hereby PERMANENTLY ENJOINED from engaging in business as debt collectors in the State of Ohio.

- D. The Defendants, jointly and severally, shall pay \$9,700.00 in consumer damages, to be distributed by the Attorney General to eligible Ohio consumers, in the following manner:
- a. Total payment of this damages amount shall be due at the time of execution of this Consent Judgment, and shall be submitted in the form of a certified check or money order, made payable to the "Ohio Attorney General," and directed to:

**Finance Assistant
Consumer Protection Section
Office of the Attorney General
30 East Broad Street, 14th Floor
Columbus, Ohio 43215**
 - b. The consumer damages paid by Defendants shall be distributed by the Attorney General to Ohio consumers who filed complaints against the Defendants prior to the execution of this Consent Judgment and whose eligibility shall be determined at the sole discretion of the Attorney General.
 - c. Any funds received under this damages provision not allocated to consumers within six months of the date of the filing of this Consent Judgment shall revert to the Attorney General's Consumer Protection Enforcement Fund.
- E. The Defendants, jointly and severally, are ordered to make a payment to the State in the amount of \$50,000.00 to be deposited in the Attorney General's Consumer Protection Enforcement Fund, with \$25,000 of this payment suspended upon full compliance with the terms of this Consent Judgment. Plaintiff shall move for the imposition of the suspended portion of this payment if Defendants fail to comply with the terms of this Consent Judgment. The other \$25,000 of this payment to the State shall be due at the time of execution of this Consent Judgment and shall be submitted in the form of a

\$25,000 certified check or money order, made payable to the "Ohio Attorney General,"
and directed to:

**Finance Assistant
Consumer Protection Section
Office of the Attorney General
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215**

- F. In the event the Attorney General must initiate legal action or incur any costs to compel Defendants to abide by this Consent Judgment, Defendants shall be liable to the State—should the State prevail—for all related enforcement costs including, but not limited to, a reasonable sum for attorneys' fees and investigatory costs.
- G. Defendants shall not represent directly or indirectly or in any way whatsoever that the Court or the Ohio Attorney General has sanctioned, condoned, or approved any part or aspect of the Defendants' business operations.
- H. Defendants shall pay all court costs.
- I. This Court shall retain jurisdiction to enforce compliance with this Consent Judgment.

IT IS SO ORDERED.

DATE

JUDGE SCHNEIDER

APPROVED:

PLAINTIFF

MICHAEL DEWINE
Ohio Attorney General

/s/ Tracy Morrison Dickens
TRACY MORRISON DICKENS (0082898)
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Counsel for Plaintiff

DEFENDANTS

/s/ Glenn R. Lista, per written authorization, by Tracy Morrison Dickens

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Buffalo, New York, 14221-6228

/s/ Sean M. Lista, per written authorization, by Tracy Morrison Dickens

SEAN M. LISTA
10505 Bergtold Road
Clarence, New York, 14031-2104

/s/ Glenn T. Lista, per written authorization, by Tracy Morrison Dickens

Representative for ROTECH HOLDINGS, LTD.

/s/ Zachary M. Swisher, per written authorization, by Tracy Morrison Dickens

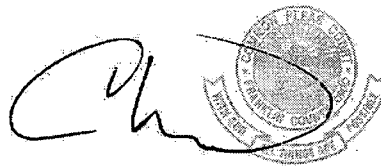
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Counsel for Defendants

Franklin County Court of Common Pleas

Date: 07-28-2016
Case Title: STATE OF OHIO EX REL ATTORNEY GENERAL DE -VS-
ROTECH HOLDINGS LTD ET AL
Case Number: 15CV009736
Type: CONSENT JUDGMENT

It Is So Ordered.

The image shows a handwritten signature in black ink, which appears to be 'C. Schneider', written over a circular official seal. The seal contains the text 'THE JUDICIAL BRANCH' at the top, 'FRANKLIN COUNTY, OHIO' in the center, and 'OFFICE OF THE CLERK OF COURTS' at the bottom. The signature is fluid and cursive.

/s/ Judge Charles A. Schneider