

STATE OF OHIO
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION SECTION

RECEIVED
ATTORNEY GENERAL OF OHIO

JUN 22 2020

IN THE MATTER OF:

All Pro Communications, Inc.
2335 Burton St., SE, Suite 120
Grand Rapids, Michigan 49506

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CONSUMER PROTECTION SECTION
PUBLIC INSPECTION FILE

DOCKET NO. 565138

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("Assurance") is entered into this 22nd day of June 2020, by Dave Yost, Attorney General of the State of Ohio ("Attorney General"), and All Pro Communications, Inc.

For purposes of this Assurance, "Respondent" means All Pro Communications, Inc., its agents, representatives, salespersons, employees, instructors, independent contractors, successors and assigns, and all persons acting in concert or participation with it, directly or indirectly, through any corporate device, partnership or association. Respondent is a limited liability company which was organized under the laws of the State of Michigan with its principal place of business at 2335 Burton St., SE, Suite 120 Grand Rapids, Michigan 49506.

WHEREAS, the Attorney General, having reasonable cause to believe that violations of Ohio's consumer protection laws have occurred, conducted an Investigation pursuant to the authority granted to him by the Consumer Sales Practices Act ("CSPA,") R.C. 1345.06;

WHEREAS, the Attorney General, having reasonable cause to believe that violations of the Telephone Consumer Protection Act ("TCPA,") 47 U.S.C. 227 and 47 C.F.R. 64.1200 have occurred, conducted an Investigation pursuant to the authority granted to him by R.C. 109.87(C)(6).

WHEREAS, Respondent has cooperated in the Investigation;

WHEREAS, the Attorney General may, pursuant to R.C. 1345.06(F) terminate an investigation upon the acceptance of an Assurance of Voluntary Compliance;

WHEREAS, Respondent voluntarily entering into this Assurance does not constitute, nor shall be construed, as an admission of any violation of any state or federal law, but desires to resolve the Investigation and avoid the expense and other costs of an ongoing Investigation and potential litigation; and

WHEREAS, Respondent voluntarily enters into this Assurance with the Attorney General as it intends and desires to comply with all aspects of consumer law, including but not limited to, the provisions of the CSPA, R.C. 1345.01 et seq., the TCPA, 47 U.S.C. 227 et seq. and 47 C.F.R. 64.1200, and R.C. 109.87.

NOW THEREFORE, in consideration of the mutual promises and conditions set forth herein, the parties hereto agree as follows:

- A. The “Effective Date” shall mean the date indicated on the first page of this Assurance.
- B. By accepting this written Assurance, the Attorney General agrees to terminate the current investigation of Respondent’s business practices for actions occurring on or before the Effective Date of this Assurance.
- C. By giving this written Assurance, Respondent agrees to comply with all terms of this Assurance and to conduct business in compliance with all applicable Ohio laws, including without limitation, the CSPA, the TCPA and R.C. 109.87.

STATEMENT OF FACTS

- 1. From May 2017 to March 2019, Respondent was engaged in the business of advertising, soliciting, and offering services, on behalf of LE Energy, LLC dba Utility Gas and Power

(“LE Energy”) related to the sale, arrangement for supply, provision and/or aggregation of customers’ retail natural gas and/or electricity products and services.

2. Respondent contracted with third party independent contractors (Vendors) to engage in “telephone solicitations” as that term is defined in 47 U.S.C. 227(a)(4) and C.F.R. 64.1200(f)(14) on behalf of LE Energy.
3. Respondent is a “supplier” as Respondent was, at all times relevant hereto, engaged in the business of effecting “consumer transactions,” either directly or indirectly, by soliciting or selling goods or services to “consumers” for purposes that were primarily for personal, family or household use, as those terms are defined in R.C. 1345.01(A), (C) and (D).
4. The Attorney General alleges that Respondent failed to engage in sufficient due diligence into Vendors’ telemarketing practices or require Vendors’ compliance with the CSPA and TCPA prior to contracting with Vendors to provide telephone solicitations.
5. The Attorney General alleges that the Vendors utilized an “automatic telephone dialing system” as that term is defined in the TCPA, 47 U.S.C. 227(a)(1) and C.F.R. 64.1200(f)(2) as it used equipment with the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, to dial such numbers.
6. The Attorney General alleges that the Vendors initiated telephone solicitations to residential telephone subscribers in the State of Ohio, whose telephone numbers were listed on the National Do Not Call Registry, without prior express consent or properly meeting exemptions.
7. At times, the Attorney General alleges that the Vendors initiated telephone solicitations to residential telephone subscribers after those subscribers requested no further solicitation calls.

8. The Attorney General alleges that some recipients of calls from the Vendors reported that the Vendors failed to promptly identify the entity on whose behalf the solicitation was made or misrepresented that the Vendor was calling on behalf of the consumers' current gas or electric supplier when such was not the case.

COMPLIANCE PROVISIONS

9. Respondent shall comply with the CSPA, R.C. 1345.02, the TCPA 47 U.S.C. 227(c) and 47 C.F.R. 64.1200(c)(2), and R.C. 109.87 by refraining from placing telemarketing calls to telephone numbers on the National Do Not Call Registry maintained by the Federal Trade Commission unless an exemption or safe harbor is applicable.
10. Respondent shall comply with the CSPA, R.C. 1345.02 et seq., the TCPA 47 U.S.C. 227(c) and 47 C.F.R. 64.1200(c)(2), and R.C. 109.87 by refraining from placing telemarketing calls to telephone numbers of consumers or residential subscribers who have previously requested to receive no further calls from the seller or on the seller's behalf, unless an exemption or safe harbor is applicable.
11. Respondent shall comply with the CSPA, R.C. 1345.02 et seq., the TCPA 47 U.S.C. 227(b) and 47 C.F.R. 64.1200(a)(2), and R.C. 109.87 by refraining from initiating telemarketing solicitations to cellular or residential subscribers' telephone numbers using an automatic telephone dialing system without express prior written consent, unless an exemption or safe harbor is applicable.
12. Respondent shall comply with the CSPA, R.C. 1345.02, by refraining from placing telemarketing calls using automated or prerecorded messages to cellular or residential subscribers' telephone numbers without express prior written consent, unless an exemption or safe harbor is applicable.

13. Respondent shall comply with the CSPA, R.C. 1345.02(B)(1) and (9), by refraining from placing telemarketing calls to consumers without promptly identifying the seller on whose behalf the Respondent is calling.
14. Respondent and any contractors hired to place telephone solicitations on Respondent's behalf shall comply with the CSPA, R.C. 1345.02(A), and the TSSA, R.C. 4719.01 et seq., unless an exemption or safe harbor is applicable.

TERMINATION OF INVESTIGATION AND RELEASE

15. As part of the consideration for this Assurance, the Attorney General agrees to terminate the Investigation into Respondent's telemarketing practices on behalf of LE Energy. The Attorney General releases Respondent from all civil claims and penalties of any kind that could have been asserted against Respondent, prior to the Effective Date, based on the allegations in this Assurance under the Consumer Laws or any other state or federal consumer protection laws relating to Respondent's telemarketing practices on behalf of LE Energy.
16. Nothing in this Assurance creates any private right of action to enforce its terms; nor does anything in this Assurance waive or limit any private right of action.

GENERAL PROVISIONS

17. This Assurance shall be governed by the laws of the State of Ohio.
18. This Assurance does not constitute an approval by the Attorney General of any of Respondent's business practices and Respondent shall not represent directly or indirectly, or in any way whatsoever, that the Attorney General has sanctioned, condoned or approved any part or aspect of Respondent's business practices.

19. This Assurance sets forth the entire agreement between the Parties and supersedes all prior agreements or understandings, whether written or oral, between the Parties and/or their respective counsel with respect to the subject matter hereof. This Assurance may be amended by written agreement between the Parties, subject to any further requirements under state law.
20. The Parties acknowledge that no other promises, representations, or agreements of any nature have been made or entered into by the Parties. The Parties further acknowledge that this Assurance constitutes a single and entire agreement that is not severable or divisible, except that if any provision herein is found to be legally insufficient or unenforceable, the remaining provisions shall continue in full force and effect.
21. Respondent shall continue to negotiate in good faith, and resolve, through the Office of the Attorney General, any consumer complaints filed with this office concerning Respondent's conduct occurring prior to or after the Effective Date of this Assurance.
22. This Assurance is a public record and shall be maintained in the Attorney General's Public Inspection File.

STATUTORY DAMAGES

23. As part of the consideration for the termination of the Attorney General's investigation of Respondent under the CSPA, R.C. 1345.06, and R.C. 109.87(C)(6), Respondent agrees to pay statutory damages in the amount of \$2,000.00 to the Attorney General. The Attorney General shall distribute the statutory damages at his sole discretion to consumers who previously complained of Respondent's telephone solicitation practices on behalf of LE Energy.

24. As part of the consideration for the termination of the Attorney General's investigation of Respondent under the CSPA, R.C. 1345.06, and R.C. 109.87(C)(6), Respondent agrees to pay \$10,000.00 to the Attorney General's Consumer Protection Enforcement Fund.
25. The payments due to the Attorney General under this agreement shall be made prior to the Effective Date of this Assurance by delivering a certified check or money order, made payable to the "Ohio Attorney General's Office," to the following address:

Ohio Attorney General's Office
Consumer Protection Section
Attn: Financial Specialist
30 East Broad Street, 14th Floor
Columbus, Ohio 43215

PENALTIES FOR FAILURE TO COMPLY

26. As consideration for the relief agreed to herein, if the Attorney General believes that Respondent has failed to comply with the terms of this Assurance, and if the failure to comply does not threaten the health or safety of the citizens of Ohio and/or does not create an emergency requiring immediate action, the Attorney General will notify Respondent in writing of such failure to comply. In such a case, Respondent shall have the right, but not an obligation, to provide a written response within 21 days of receiving written notice from the Attorney General of the alleged failure to comply. The Attorney General shall not initiate an enforcement proceeding until after the 21-days elapse. Nothing herein shall prevent the Attorney General from providing additional time beyond the 21-day period to respond.
27. The Attorney General may assert any claim that Respondent has violated this Assurance in a separate civil action to enforce this Assurance, or to seek any other relief afforded by law, including attorney fees, investigative costs, and a civil penalty.

28. Pursuant to R.C. 1345.06(F), this Assurance is not, and shall not be construed as, evidence of any violation of the CSPA by Respondent. Evidence of a violation of an Assurance of Voluntary Compliance, though, is prima-facie evidence of an act or practice in violation of the CSPA, if presented after the violation in an action brought under the CSPA.
29. This Assurance shall in no way exempt Respondent from any other obligations imposed by law, and nothing contained in this Assurance shall relieve Respondent of any legal responsibility for any acts or practices engaged in by Respondent other than those acts specifically resolved by this Assurance.
30. Nothing in this Assurance shall in any way preclude the Attorney General from commencing any future investigative or enforcement action against Respondent under any legal authority granted to the Attorney General:
 - a. With respect to the transactions or occurrences which are the subject of this enforcement action, if the terms of this Assurance are not fully met; or
 - b. With respect to new transactions or occurrences which are not the subject of this action. (accept that such actions will be subject to the notice provisions in Paragraph 26 of this Assurance).

WHEREFORE, the parties hereto affix their signatures in recognition and acceptance of the terms contained herein on this 22nd day of June 2020.

DAVE YOST
OHIO ATTORNEY GENERAL



Teresa A. Heffernan
Principal Assistant Attorney General
Consumer Protection Section
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Teresa.Heffernan@OhioAttorneyGeneral.gov
Counsel for the Ohio Attorney General

June 22, 2020

DATE

Sandra Lynskey, Esq.
Mac Murray & Shuster LLP
6525 West Campus Oval, Suite 210
New Albany, Ohio 43054
(614) 939-9955
Counsel for the Respondent

DATE

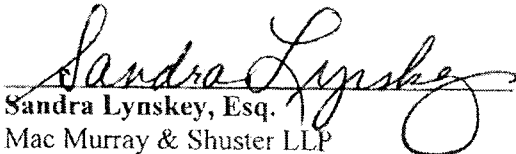
Michael Ramer, President
On behalf of:
All Pro Communications, Inc.
2335 Burton St., SE, Suite 120
Grand Rapids, Michigan 49506
(888) 405-9826

DATE

DAVE YOST
OHIO ATTORNEY GENERAL

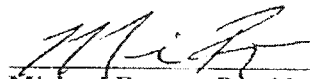
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(614) 939-9955
Counsel for the Respondent

DATE

6/18/20


Michael Ramer, President
On behalf of:
All Pro Communications, Inc.
2335 Burton St., SE, Suite 120
Grand Rapids, Michigan 49506
(888) 405-9826

DATE

6/16/2020