

ENTERED

August 15, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

STATE OF TEXAS, et al.;

Plaintiffs,

vs.

RISING EAGLE CAPITAL GROUP, LLC, et
al.;

Defendants.

Case No. 4:20-cv-02021

**STIPULATED ORDER FOR
PERMANENT INJUNCTION AND
MONETARY JUDGMENT
AGAINST MICHAEL T. SMITH
AND HEALTH ADVISORS OF
AMERICA, INC.**

PREAMBLE

Plaintiffs, the Attorneys General of the States of Arkansas, Indiana, Michigan, North Carolina, North Dakota, Ohio, and Texas (collectively “Plaintiffs”)¹, filed their Second Amended Complaint (ECF No. 56) (“Complaint”) in this matter against Michael T. Smith Jr., individually (“Smith”) and Health Advisors of America, Inc. (“HAA”) (collectively referred to as “Defendants”), and others. The Complaint sought a permanent injunction, damages, civil penalties, and other equitable relief in this matter pursuant to the Telephone

¹ The State of Missouri is also a Plaintiff in this matter, but it does not bring any claims against Shapiro and certain other defendants.

Consumer Protection Act (“TCPA”), 47 U.S.C. § 227(g)(1)-(2), and respective telemarketing and deceptive acts and practices laws of the Plaintiff states.

Unless otherwise provided, this Stipulated Order shall apply to Defendants and their agents, employees, officers, members, directors, affiliates, subsidiaries, representatives, trustees, attorneys, successors, heirs, and assignees, and any other Person acting under their direction and control, including through any corporation, trust, or other device, and it shall constitute a continuing obligation.

Plaintiffs and Defendants stipulate to the entry of this Stipulated Order for Permanent Injunction and Monetary Judgment against Defendants (“Order”) to resolve all matters in dispute in this action between Plaintiffs and Defendants.

THEREFORE, IT IS ORDERED as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over this matter and has authority to issue this Order pursuant to the TCPA, 47 U.S.C § 227(g)(2), the Telemarketing and Consumer Fraud and Abuse Prevention Act (the “Telemarketing Act”), 15 U.S.C. § 6103(e), the Telemarketing Sale Rule (“TSR”), 16 C.F.R. § Part 310, the respective telemarketing and deceptive acts and practices laws of the Plaintiffs’ states, and Federal Rule of Civil Procedure 65.

2. The Complaint alleges that Defendants and others initiated millions of Robocalls, advertising various goods and services, including healthcare products, to residential and/or cellular telephone numbers of residents located within the jurisdiction of the Plaintiffs and other states throughout the United States without the prior express

consent of the called parties in violation of multiple sections of the TCPA and its implementing rules, 47 C.F.R. § 64.1200(c)(2), 47 U.S.C. § 227(c), 47 C.F.R. § 64.1200(a)(3), 47 U.S.C. § 227(b)(1)(B), 47 C.F.R. § 64.1200(a)(1)(iii), 47 U.S.C. § 227(b)(1)(A)(iii), 47 C.F.R. § 64.1200(a)(2), 47 C.F.R. § 64.1200(b)(1), 47 U.S.C. § 227(d)(3)(A), 47 C.F.R. § 64.1604(a), and 47 U.S.C. § 227(e)(1), and the state statutes listed below.

STATE STATUTES ALLEGEDLY VIOLATED BY DEFENDANT	
Arkansas	Ark. Code Ann. § 4-88-107(a)(10); Ark. Code Ann. § 4-99-104; Ark. Code Ann. § 4-99-201(a)(1); and Ark. Code Ann. § 4-99-405(1).
Indiana	Ind. Code 24-4.7-4; Ind. Code 24-5-14; Ind. Code § 24-5-12-10; and Ind. Code § 23-0.5-5-2.
Michigan	MCL 445.111a(1), (5); MCL 445.111b(1); MCL 445.111c(1)(f); and MCL 445.903(1)(gg).
North Carolina	N.C. GEN. STAT. §§ 75-1.1, <i>et seq.</i> ; N.C. GEN. STAT. §§ 75-100, <i>et seq.</i>
North Dakota	N.D.C.C. §§ 10-32.1-74, 51-15-02, 51-28-02, 51-28-06, and 51-28-07.
Ohio	O.R.C 1345.01, <i>et seq.</i> and O.R.C. 4719.01 <i>et seq.</i>
Texas	TEX. BUS. & COM. CODE § 304.052

3. On January 18, 2023, Michael T. Smith filed a voluntary chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Southern District of Florida, Fort Lauderdale Division, Case Number 23-10373-PDR-11 (“Smith’s Bankruptcy Case”).

4. Pursuant to 11 U.S.C. 362(b)(4), Smith’s Bankruptcy Case does not operate as a stay of this action or the relief sought and included herein as Plaintiffs’ filing and continuation of this action against the Defendants and other parties is an exercise of each

Plaintiff's respective police and regulatory power. Any actions by the Plaintiffs to enforce the monetary provisions of this Order during the pendency of the Smith's Bankruptcy Case shall be subject to applicable bankruptcy laws and rules.

5. Defendants deny the allegations of wrongdoing against them in the Complaint, except as specifically stated in this Order. Only for purposes of this Order, Defendants do not contest the facts necessary to establish jurisdiction.

6. Defendants waive any claim that they may have under the Equal Access to Justice Act, 28 U.S.C. § 2412 for attorneys' fees and costs, concerning the prosecution of this action through the date of this Order.

7. Defendants and Plaintiffs waive all rights to appeal or otherwise challenge or contest the validity of this Order; however, Defendants shall not be prohibited from challenging the merit of any alleged violations of this Order.

8. The Court approves the terms of the parties' agreement as set forth herein and hereby adopts them as its own determination of this matter and the parties' respective rights and obligations.

9. Entry of this Order is in the public interest.

I. DEFINITIONS

For this Order, the following definitions apply:

A. **Complaint,** **"HAA," "Order," "Plaintiffs," "TCPA," "Telemarketing Act"**, and **"TSR"** mean those definitions described above in the Preamble and Findings.

B. **"Assist and Facilitate" and "Assisting and Facilitating"** mean providing substantial assistance or support.

C. **“Communication”** means any contact, whether formal or informal, between two or more Persons, at any time or place, and under any circumstances whatsoever, whereby information of any kind or nature was transmitted, transferred, disclosed, exchanged, or recorded. It includes, without limitation, any oral, written, and Electronically Stored Information that is opened or unopened, active, or deleted.

D. **“Click-to-Call”** means a telephone call, including a form of Web-based communication, in which a Person clicks an object on a website or web-based application (e.g., button, image or text) and is immediately connected with another Person in real-time either by telephone call, Voice-over-Internet-Protocol (VoIP), or text.

E. **“Customer”** means any Person for whom or for which the Defendants and their companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, provide consulting or any other services, including, without limitation, those that include or are related to Lead Generation, Robocalls, Click-to-Call, and/or Telemarketing, for any type of consideration or compensation benefiting Defendants directly or indirectly.

F. **“Defendants”** means HAA and Michael T. Smith, both individually and collectively.

G. **“DNC Registry”** means the National Do Not Call Registry maintained by the Federal Trade Commission.

H. **“Documents”** is synonymous in meaning and equal in scope to the usage of “document” in Federal Rule of Civil Procedure 34(a) and includes writings, drawings, graphs, charts, photographs, sound and video recordings, images, Internet sites, web pages,

websites, electronic correspondence, including e-mail and instant messages, contracts, accounting data, advertisements, FTP Logs, Server Access Logs, books, written or printed records, handwritten notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business canceled checks and check registers, bank statements, appointment books, computer records, customer or sales databases and any other Electronically Stored Information, including other data or data compilations from which information can be obtained directly or, if necessary, after translation into a reasonably usable form. A draft or non-identical copy is a separate Document within the meaning of the term.

I. **“Electronically Stored Information”** means, without limitation, computer or electronic files stored on file servers, e-mail servers, work stations, desktops, hard drives, solid-state drives, cloud storage, personal digital assistants, smartphones (e.g., Blackberrys, iPhones, Androids), tablets (e.g., iPads) and other mobile electronic devices, or other electronic social or industrial/business web-based media (e.g., Facebook®, Twitter®, LinkedIn®, Skype®, WhatsApp®, etc.), records, data, reports, and queries derived from or residing in applications and databases, computer printouts, contracts, cost sheets, data compilations from which information can be obtained, derived, or can be translated through detection devices or converted or translated into reasonably usable form, magnetic discs, magnetic strips, magnetic tape, recognition characters, microfiche, microfilm, optical characters, punched cards, punched paper tapes, audio tapes or recordings, or video tapes or recordings.

J. **“Lead Generation”** means the assignment, creation, sourcing, sale, subscription, leasing, renting, distribution, provisioning, purchase, reselling, wholesaling,

or transfer of any list or compilation of telephone numbers utilized or intended to be utilized for the purpose of generating or initiating Outbound Telephone Calls and/or Telemarketing.

K. **“Outbound Telephone Call”** means a telephone call initiated to:

1. Induce the purchase of goods or services;
2. Advertise or offer a loan or extension of credit; or
3. Obtain information that may be used to induce the purchase of goods or services.

L. **“Person”** means any individual, group, organization, unincorporated association, limited or general partnership, corporation, subsidiary, affiliate, or other legal entity.

M. **“Robocall(s)”** means a telephone call that delivers artificial or prerecorded voice messages, in whole or in part, including, without limitation, telephone calls utilizing soundboard technology and ringless voicemail messages, whether acting directly or through an intermediary.

N. **“Telemarketing”** means any plan, program, or campaign that initiates Outbound Telephone Calls by use of a telephone or VoIP-related technology and which involves a telephone call.

O. **“VoIP”** means Voice over Internet Protocol.

ORDER

II. PROHIBITION ON VIOLATING THE TCPA, TSR, AND STATE LAWS

IT IS ORDERED that Defendants and their companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, causing others to engage in, Assisting and Facilitating others engaging in, or consulting, brokering, planning, investing, or advising regarding conduct that violates the TCPA, 47 U.S.C. § 227, its implementing rules, 47 C.F.R. §§ 64.1200 and 64.1604, the TSR, 16 C.F.R. Part 310, and the state statutes listed below, each as amended and also attached as Appendix A.

STATE STATUTES	
Arkansas	Ark. Code Ann. §§ 4-88-101, <i>et seq.</i> ; Ark. Code Ann. §§ 4-99-101, <i>et seq.</i>
Indiana	Ind. Code § 23-0.5-5-2; Ind. Code 24-4.7-4; Ind. Code 24-5-0.5; Ind. Code 24-5-12; Ind. Code 24-5-14; and Ind. Code 24-5-14.5.
Michigan	MCL 445.111, <i>et seq.</i> ; MCL 445.901, <i>et seq.</i>
North Carolina	N.C. GEN. STAT. §§ 75-1.1, <i>et seq.</i> ; N.C. GEN. STAT. §§ 75-100, <i>et seq.</i>
North Dakota	N.D.C.C. §§ 10-32.1-01, <i>et seq.</i> ; 51-15-01, <i>et seq.</i> ; 51-28-01, <i>et seq.</i>
Ohio	O.R.C 1345.01, <i>et seq.</i> ; O.R.C. 4719.01, <i>et seq.</i>
Texas	TEX. BUS. & COM. CODE § 304.052

These prohibitions also include, but are not limited to, initiating, causing the initiation of, or transmitting:

- A. any telephone call displaying a caller ID number that the calling party does not have legal authority to use; and

B. any telephone call that is placed to telephone numbers on the DNC Registry or any state equivalent which have been registered for the time period required by the DNC Registry or state equivalent, when the calling party does not have the requisite consent from the called party.

III. PERMANENT BAN ON ROBOCALLING PLAINTIFF STATES

IT IS FURTHER ORDERED that Defendants and their companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, are permanently restrained and enjoined from engaging in, Assisting and Facilitating others to engage in, or consulting, brokering, planning, investing, or advising regarding any of the following conduct to persons in the Plaintiff States:

A. Initiating, causing others to initiate, or Assisting and Facilitating others in initiating, any Outbound Telephone Call that plays or delivers a Robocall, unless Defendants prove that such prerecorded message was delivered for the purpose of compliance with 16 C.F.R. § 310.4(b)(4)(iii), as amended;

B. Controlling, holding a managerial post in, consulting for, serving as an officer of, having any revenue sharing agreement with, or holding any ownership interest, share, or stock in any Person that Defendants know or reasonably should know engages in conduct prohibited in Section III.A above; *provided, however*, that it is not a violation of this Order to (i) own a non-controlling interest in a publicly traded company that engages in such conduct, or (ii) consult on matters that do not in any way constitute, contribute to, or facilitate conduct prohibited in section III.A above.

IV. TEN-YEAR BAN ON TELEMARKETING, DID PROVISIONING, AND

LEAD GENERATION IN PLAINTIFF STATES

IT IS FURTHER ORDERED that, for ten (10) years from the date of this Order, Defendants and their companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, are restrained and enjoined from engaging in, Assisting and Facilitating others to engage in, or consulting, brokering, planning, investing, or advising regarding any of the following conduct to persons in the Plaintiff States:

- A. All Telemarketing;
- B. Providing, leasing, provisioning, reselling, or assigning telephone numbers, including those related to direct inward dialing ("DID");
- C. All Lead Generation; and
- D. Initiating, causing the initiation of, or transmitting any telephone calls that are placed to telephone numbers on the DNC Registry or any state equivalent thereof.
- E. Notwithstanding paragraphs III.A – D above, it shall not be a violation of this section for Defendants to receive inbound calls if Defendants can prove that the call, whether it came from Defendants' website or web-based application, or a third-party's website or web-based application, is a Click-to-Call that meets each of the following criteria:

- 1. The individual on the other end of the telephone line (i.e. the individual to whom Defendants deliver or intend to deliver a solicitation) has expressly consented to a one-time communication with Defendants by

clicking an object on a website or web-based application (for example a button, image, or text) (“Object”);

2. Prior to clicking the Object, the individual was conspicuously and accurately informed regarding the consequences of clicking the Object and the purpose of the communication;

3. Immediately after clicking the Object—that is, no later than ten seconds after clicking the Object—the individual is connected with Defendants; and

4. Does not seek consent from the individual who clicked the Object to allow or to receive any additional, other, and/or future communications through Lead Generation, Telemarketing, or by automated or prerecorded or artificial voice telephone calls as defined by the TCPA and/or TSR. However, nothing in this provision shall preclude Defendants from obtaining consent to allow or to receive any additional, other, and/or future communications through Telemarketing from the individual who initiated the Click-to-Call connection if (a) that individual actually purchases the product or service that was offered by Defendants through this Click-to-Call connection, (b) Defendants obtained requisite consent from the individual to receive (i) Telemarketing calls unrelated to the product or service offered and accepted during the Click-to-Call transaction and/or (ii) Robocalls related to the product or service sold during the Click-to-Call transaction, and (c) that consent fully complies with federal and state laws set forth in Section II,

including that the individual can easily revoke consent to Telemarketing. Defendants shall maintain records of each consent obtained for a period of no less than five years, and, within fourteen (14) days of a written request from any Plaintiff, shall furnish copies of the records. Moreover, Defendants agree that consents obtained during the Click-to-Call transaction will not be used by Defendants for Lead Generation and will not be provided to third parties for Lead Generation in accordance with Section IV.A.

V. COMPLIANCE MONITORING, REPORTING, AND RECORDKEEPING REQUIREMENTS

IT IS FURTHER ORDERED that Defendants and their existing and future companies make timely submissions to the Plaintiffs, allow Plaintiffs to monitor their compliance, and to keep records, including:

A. Within sixty (60) days after entry of this Order, Defendants must submit a compliance report, sworn under penalty of perjury.

1. Defendant Smith must: (a) identify the primary physical, postal, and email address and telephone number, as designated points of contact, which representatives of the Plaintiffs may use to communicate with him; (b) identify all of Defendant Smith's existing businesses, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses; (c) describe the activities of each

business, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, including, without limitation, the involvement of any other defendants named in the Complaint if they know or should know of the involvement or activities due to their own involvement; (d) describe in detail whether and how Defendants and Defendant Smith's existing businesses, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, are in compliance with each Section of this Order; and (e) provide a copy of each Order Acknowledgment obtained pursuant to this Order, unless previously submitted to the Plaintiffs.

2. Additionally, Defendant Smith must: (a) identify all of his telephone numbers and all physical, postal, email and internet addresses, including all residences; (b) identify all business activities, including any business for which Defendant Smith performs services whether as an employee, consultant, independent contractor, or otherwise, and any entity in which Defendant Smith has any ownership interest, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call; and (c) describe in detail Defendant Smith's involvement in each such business, including title, role, responsibilities, participation, authority, control, and any ownership.

B. For ten (10) years after entry of this Order, Defendants must submit a compliance notice, sworn under penalty of perjury, within thirty (30) days of any change in the following:

1. Defendants must report any change that they know or reasonably should know have been made in: (a) name, including aliases or fictitious or dba name of any business or entity; (b) any designated point of contact; (c) contact information, including physical address, mailing address, email address, and any website address; (d) the structure of any Person; or (e) Defendants' title or role in any business activity (i) in which Defendants have any ownership interest in or controls directly or indirectly that may affect compliance obligations arising under this Order, or (ii) for which Defendants perform services, whether as an employee, consultant, independent contractor, or otherwise. Such changes further include creation, merger, sale, or dissolution of the entity or any subsidiary, parent, affiliate, or Person that engages in any acts or practices subject to this Order.

2. Additionally, Defendants must report any new contract or agreement, whether formal or informal, into which Defendant Smith or any of his existing or future companies enters if such contract or agreement is for consulting services or is related to Telemarketing, Lead Generation, Outbound Telephone Call, and/or Click-to-Call.

C. For ten (10) years after entry of this Order, and within forty-five (45) days, or such additional time as agreed by the parties, of written request from a representative of any Plaintiff:

1. Defendant Smith must appear for depositions and produce Documents and other requested information, which must be sworn under penalty of perjury, for inspection and copying, subject to all appropriate objections. It is expressly agreed that Defendant Smith shall not have to travel for any deposition sought farther than he would be required to travel if they were issued a valid subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure. Each Plaintiff is also authorized to obtain discovery, without further leave of court, using any of the procedures prescribed by Federal Rules of Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and 69. Nothing in this Order limits any Plaintiff's lawful demand for Documents or other evidence pursuant to applicable law.

2. For matters concerning this Order, each Plaintiff is authorized to communicate directly with Defendants' counsel. Defendants must not interfere with representatives of any Plaintiff to interview any employee or other individual affiliated with Defendant Smith and his existing and future companies, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, who has agreed to such an interview, in writing, and after being allowed to confer with counsel. The individual interviewed may have counsel present, who may make all appropriate objections, which will not be deemed interference for the purposes of this provision.

3. Any Plaintiff may use all other lawful means, including posing, through its representatives as consumers, donors, suppliers, or other individuals or entities, to Defendants or any individual or entity affiliated with Defendants, without

the necessity of identification or prior notice. Nothing in this Order limits Plaintiffs' lawful use of relevant state or federal laws governing pre-suit investigation and discovery.

D. For ten (10) years, Defendant Smith must submit to the Plaintiffs notice of the filing of any bankruptcy petition, insolvency proceeding, or similar proceeding by or against them or any entity in which Defendant Smith has any ownership interest, or any filing for voluntary dissolution, within thirty (30) days of its filing.

E. Any submission required by this Order shall comply with 28 U.S.C. § 1746, such as by concluding: "I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on: _____" and supplying the date, signatory's full name, title (if applicable), and signature.

F. Unless otherwise directed by a Plaintiffs' representative in writing, all submissions to the Plaintiffs pursuant to this Order must be emailed to or sent by overnight courier (not the U.S. Postal Service) to:

AMANDA WENTZ
Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Email: Amanda.Wentz@ArkansasAG.gov; Consumer@ArkansasAG.gov

JOSEPH D. YEOMAN
Deputy Attorney General – Data Privacy & Identity Theft Unit
Office of Indiana Attorney General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, Indiana 46204
Email: Joseph.Yoeman@atg.in.gov

JASON EVANS
Division Chief
Corporate Oversight Division
Michigan Dept. of Attorney General
525 W. Ottawa St., 5th Floor
Lansing, Michigan 48933

TRACY NAYER
Special Deputy Attorney General
North Carolina Department of Justice
Consumer Protection Division
P.O. Box 629
Raleigh, North Carolina 27602
Email: tnayer@ncdoj.gov

PARRELL D. GROSSMAN
Assistant Attorney General
North Dakota Attorney General
Consumer Protection & Antitrust Division
1720 Burlington Drive, Suite C
Bismarck, North Dakota 58504-7736

ERIN LEAHY
Assistant Attorney General
Ohio Attorney General's Office
Consumer Protection Section
30 E. Broad Street, 14th Floor
Columbus, Ohio 43215
Email: Erin.Leahy@OhioAGO.gov

DAVID G. SHATTO
Assistant Attorney General
Office of the Attorney General of Texas
Consumer Protection Division
P.O. Box 12548
Austin, Texas 78711-2548
Email: David.shatto@oag.texas.gov.

The subject line must begin: *State of Texas, et al. v. Rising Eagle Capital Group, LLC, et al.*, Case No. 4:20-cv-02021. Should Defendants' emailed communication under this

section be undeliverable, Defendants shall send submissions via courier to the mailing addresses provided.

G. Defendants expressly consent to the sharing of any and all Documents submitted as part of their compliance reporting to any Plaintiff with all other Plaintiffs.

H. Upon written request from a representative of any Plaintiff, any consumer reporting agency must furnish consumer reports concerning Defendants, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(a)(1), as amended.

I. Defendants may not impede any Plaintiff's ability to audit any call center Defendants have a contract or agreement with, whether such agreement is formal or informal, within twenty-one (21) days of receipt of a written request to Defendants from a representative of any Plaintiff.

J. Defendant Smith and his existing and future companies, to the extent that such businesses make, initiate, or Assist and Facilitate Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, must create certain records for ten (10) years after entry of the Order and retain each such record for no less than five (5) years; Defendant Smith and his existing and future companies must retain certain records for ten (10) years after entry of the Order and retain each such record for no less than five (5) years when Defendant Smith and his existing and future companies have control, directly or indirectly, over the certain records; for the avoidance of doubt, this includes any and all records currently in their possession, including, without limitation, Documents, contracts, call detail records, invoices, and Communications, must be retained for no less than five (5) years. Specifically, for any business that Defendant Smith, individually or collectively

with any other defendants named in the Complaint, are a majority owner or controls directly or indirectly, must create and retain the following records, and Defendant Smith and his existing and future companies must retain the following records Defendant Smith and his existing and future companies' control, directly or indirectly:

1. Accounting records showing the revenues from all goods or services sold, Lead Generation, Telemarketing, Outbound Telephone Call and/or Click-to-Call;

2. Records of all contracts, service agreements, invoices, and sales agreements with each Customer, client, supplier, or vendor, including, without limitation, any Communications or Documents related thereto;

3. Personnel records showing, for each individual providing services, whether as an employee, consultant, independent contractor, or otherwise, that individual's name; addresses; telephone numbers; job title or position; dates of service; and (if applicable) the reason(s) for termination;

4. Records of all consumer complaints concerning Outbound Telephone Calls, Telemarketing, Robocalls, and/or Click-to-Call, whether received directly or indirectly, such as through a third party, and any response;

5. All formal written requests from law enforcement agencies, subpoenas, civil investigative demands, search warrants, and related records, and other complaints about unwanted, fraudulent, or abusive Telemarketing, autodialed, prerecorded, or artificial voice telephone calls or Click-to-Call, and all responses thereto;

6. All call detail records for any Customer engaged in Telemarketing and/or initiating or generating Robocalls and all such call detail records must be retained for at least five (5) years from the date of each call;

7. All Click-to-Call records, including but not limited to, call detail records, recordings, consent, sales, and contracts from all Click-to-Calls transmitted to Defendant Smith and his existing and future companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, including Persons Defendants provide consulting services to; and

8. Records of all provisioning and/or assigning of telephone numbers, including the dates provisioned or assigned to Defendant Smith and/or his existing and future companies and the dates such party provisioned or assigned to third parties.

K. Defendant Smith and his existing and future companies must create records for ten (10) years after entry of the Order and retain each such record for no less than five (5) years regarding All records related to Section VI for “Due Diligence on Business Relationships.”

VI. DUE DILIGENCE ON BUSINESS RELATIONSHIPS

IT IS FURTHER ORDERED that Defendants and their companies, officers, agents, and employees, and all other Persons in active concert or participation with them, whether acting directly or indirectly, are required to conduct reasonable due diligence into all current and prospective Customers, and that Defendants are permanently restrained and

enjoined from engaging in, or Assisting and Facilitating others to engage in, entering into or continuing any business relationship, including, without limitation, consulting services, with a Customer if Defendants know or reasonably should know that such Customer is or is likely engaging in any conduct prohibited in Sections II, III, or IV of this Order. Defendants further agree to conduct reasonable due diligence before entering into any business relationship to ensure that such Customer does not or is not likely engaging in any prohibited conduct. To the extent that Defendants have a preexisting business relationship with a Customer as of the date of this Order, Defendants further agree to conduct such reasonable due diligence to ensure that such Customer does not engage in, or is not likely engaging in, any prohibited conduct. Defendants agree that failure to conduct such reasonable due diligence shall be deemed conscious avoidance of knowledge and does not eliminate liability for this Section. Reasonable due diligence means reasonable efforts to determine the following items:

A. The name, physical and mailing addresses, contact telephone number(s), and email address of the principal(s) and controlling Person(s) of the prospective Customer, and any Person(s) with a majority ownership interest with the prospective Customer;

B. A list of all business and trade names, fictitious names, DBAs, and websites under or through which the prospective Customer currently transacts or advertises business or has transacted or advertised business in the two years prior to conducting business with, or on behalf of, the Customer;

C. A description of the nature of the prospective Customer's business, including a description of the nature of the goods and services sold, methods of sale, and whether they are involved in Lead Generation, Robocalls, Click-to-Call, and/or Telemarketing;

D. A list of each physical address at which the prospective Customer has conducted business or will conduct the business(es) identified pursuant to subsection (A) of this Section;

E. The prospective Customer's means and source of payment for Defendants' services;

F. The billing address and email address associated with the prospective Customer's means and source of payment for Defendants' services, as well as the name, physical and mailing addresses, contact telephone number(s), and email address of the Person or entity paying for such services;

G. For U.S.-domiciled companies, the Customer's federal taxpayer identification number;

H. The prospective Customer's state or country of incorporation or organization;

I. Whether the prospective Customer (including the principal(s), controlling Person(s) of the entity, and any Person(s) with a majority ownership interest in the entity) has ever been the subject of a lawsuit alleging claims under the TSR, the TCPA, or any other lawsuit regarding illegal Robocalls, illegal automated dialing, calls to the DNC Registry or any state do not call registry, spoofed caller ID numbers, or otherwise illegal telemarketing or solicitations;

J. If the prospective Customer engages in Lead Generation, Robocalls, Click-to-Call, and/or Telemarketing, such prospective Customer's written policies, practices, and procedures documenting its compliance with the TSR, TCPA, and any other state or federal laws governing Robocalls, telemarketing, solicitations, caller IDs, and/or automated dialing; and

K. Whether the Customer (including the principal(s), controlling Person(s) of the entity, and any Person(s) with a majority ownership interest in the entity) has been issued any formal written requests from law enforcement agencies, subpoenas, civil investigative demands, and/or search warrants concerning illegal Robocalls, illegal automated dialing, calls to the DNC Registry or any state do not call registry, spoofed caller ID numbers, or otherwise illegal telemarketing or solicitations.

VII. COOPERATION

IT IS FURTHER ORDERED that Defendants must fully cooperate with representatives of the Plaintiffs in this case and in any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint. Defendants must provide truthful and complete information, evidence (including any and all Documents, Communications, and other records), and testimony. Defendants must appear and/or request that any of their officers, employees, representatives, or agents to appear for interviews, discovery, hearings, trials, and any other proceedings that a Plaintiff's representative may reasonably request upon twenty-one (21) days written notice at such reasonable places and times as a Plaintiff's representative may reasonably designate, without the service of a subpoena. In this regard, it shall be deemed reasonable

for Defendant to ask his officers, employees, representatives, or agents to appear via videoconference for any matter that is taking place more than 100 miles from his, her, or their home, unless such videoconference appearance is not allowed by law or court rule. Further, it is expressly agreed that Defendant Smith shall not have to travel in connection with his obligations pursuant to this Section of the Order farther than he would be required to travel if he were issued a valid subpoena pursuant to Rule 45 of the Federal Rules of Civil Procedure; however, Defendant Smith shall be required to travel to Houston for any legal proceeding related to the above-captioned case, but he will be reimbursed for all reasonable travel expenses.

Further, to assist the Plaintiffs with any investigation related to or associated with the transactions or the occurrences that are the subject of the Complaint, and with monitoring of the Defendants' compliance with this Order, Defendants consent, for purposes of the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2523 to the disclosure, by electronic communications service providers and remote computing service providers of the contents of or Communications regarding any autodialed, telemarketing, artificial voice or prerecorded telephone calls or Communications with Customers regarding services provided by the Defendants. Defendants further agree to execute appropriate forms he receives from any Plaintiff, within seven (7) business days of receipt of the same, that will document providing his consent to the disclosure of such electronic communications service providers or remote computing service providers.

VIII. MONETARY JUDGMENT

IT IS FURTHER ORDERED that:

A. Judgment in the amount of seventy-three million, seventy-six thousand, nine hundred and thirty dollars (\$73,076,930) (the “Monetary Judgment Amount”) is entered in favor of the Plaintiffs and against the Defendants, jointly and severally, as monetary judgment to be split in equal amounts of \$10,439,561.43 to each Plaintiff as follows:

- Arkansas –\$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 in civil penalties pursuant to the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. § 4-88-113(a)(3).)
- Indiana – \$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 civil penalties pursuant to Ind. Code § 24-5-14.)
- Michigan – \$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 in civil penalties pursuant to section 5(1) of the Michigan Consumer Protection Act, MCL 445.905(1).)
- North Carolina – \$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 in civil penalties and attorneys’ fees and costs pursuant to the North Carolina Unfair or Deceptive Trade Practices Act, N.C.G.S. § 75-105.)

- North Dakota – \$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 in civil penalties pursuant to N.D.C.C. §§ 51-15-11 and 51-28-17 of the North Dakota Unlawful Sales or Advertising Practices Act and Telephone Solicitations Law.)
- Ohio – \$10,439,561.43 (\$3,479,853.81 in statutory damages pursuant to section 227(g) of the TCPA, \$3,479,853.81 in civil penalties pursuant to O.R.C. section 1345.07 of Ohio’s Consumer Sales Practices Act, and \$3,479,853.81 in civil penalties pursuant to O.R.C. section 4719.12 of Ohio’s Telephone Solicitation Sales Act.)
- Texas –\$10,439,561.43 (\$5,219,780.71 in statutory damages pursuant to section 227(g) of the TCPA and \$5,219,780.72 in civil penalties pursuant to section 304.252(1) of the Texas Telemarketing Disclosure and Privacy Act.)

B. Subject to Subsections C and D of this Section, all but \$250,000.00 in civil penalties of the Monetary Judgment Amount shall be suspended due to Defendants’ financial situation. The \$250,000.00 unsuspended civil penalties portion shall be split in equal amounts of \$35,714.28 to each Plaintiff State.

C. Plaintiffs’ agreement to the suspended portion of the Monetary Judgment Amount is expressly premised upon the truthfulness, accuracy, and completeness of the following (collectively, “Financial Representations”) at the time they were submitted to Plaintiffs:

1. The sworn Financial Statement of Michael T. Smith, Jr., as last updated and signed on June 2, 2021 and submitted to the Plaintiffs by Defendants' then-counsel (Anthony Franqui) via electronic mail on June 2, 2021;
2. The sworn Schedules, Statement of Financial Affairs, and other documents filed by Michael T. Smith, Jr. in Smith's Bankruptcy Case at time of Michael T. Smith, Jr.'s execution of this Order;
3. The taxpayer identification numbers (Social Security Number and Employer Identification Number) for the Defendants submitted to the Plaintiffs in the Financial Statement of Michael T. Smith Jr., signed on June 2, 2021 and submitted to the Plaintiffs by Defendants' then-counsel (Anthony Franqui) via electronic mail on June 2, 2021 and/or as identified in Smith's Bankruptcy Case;

D. If, upon motion by a Plaintiff, the Court finds that Defendants violated any provision of this Order other than the payment obligations created in Subsections A or B of this Section, failed to disclose any material asset or liability, materially misstated the value of any asset or amount of any liability, or made any other material misstatement or omission in the Financial Representations, the suspended portion of the Monetary Judgment Amount shall become unsuspended and the entire Monetary Judgment Amount becomes immediately due, plus interest computed from the date of entry of this Order.

E. The facts alleged in the Complaint will be deemed undisputed, without further proof, in any subsequent civil litigation by or on behalf of the Plaintiffs, including

in a proceeding to enforce its rights to any payment or monetary judgment pursuant to this Order.

F. Defendants acknowledge that their Taxpayer Identification Numbers (Social Security Number and Employer Identification Number), which Defendants previously submitted to the Plaintiffs, may be used for collecting and reporting on any delinquent amount arising out of this Order.

G. Any actions by the Plaintiffs to enforce the monetary provisions of this Order during the pendency of Smith's Bankruptcy Case shall be subject to applicable bankruptcy laws and rules.

IX. ORDER ACKNOWLEDGMENTS

IT IS FURTHER ORDERED that Defendants obtain acknowledgments of receipt of this Order:

A. Defendants, within seven (7) days of entry of this Order, must submit to Plaintiff State of Texas an acknowledgment of receipt of this Order sworn under penalty of perjury;

B. For ten (10) years after entry of this Order, Defendants, for any business that they, individually or collectively with any other defendants named in this Complaint, are the majority owner or control directly or indirectly, must deliver a copy of this Order to: (1) all principals, officers, directors, and limited liability company managers and members; (2) all employees, agents, and representatives with managerial responsibilities for conduct related to the subject matter of the Order; and (3) any business entity resulting from any change in structure as set forth in Section V. Delivery must occur within seven (7) days

of entry of this Order for current personnel. For all others, delivery must occur before they assume their responsibilities;

C. For ten (10) years after entry of this Order, Defendant Smith and his existing and future companies must deliver a copy of this Order to any new Customers prior to executing an agreement to provide any services or prior to providing any services, whichever is earlier;


D. Existing Customers of the Defendant Smith and his existing and future companies must receive a copy of this Order within fourteen (14) days of the entry of this Order; and

E. From each individual or entity to which Defendants delivered a copy of this Order, Defendants must obtain, within thirty (30) days, a signed and dated acknowledgment of receipt of this Order.

X. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court retains jurisdiction of this matter for purposes of construction, modification, and enforcement of this Order.

SO ORDERED this 15th day of August, 2023.


UNITED STATES DISTRICT JUDGE
GEORGE HANKS, JR.

SO STIPULATED AND AGREED:

FOR DEFENDANT:

August 1, 2023



Dominick L. Lanzito
State of Illinois Bar No.: 6277856
Peterson, Johnson & Murray Chicago LLC
200 West Adams – Suite 2125
Chicago, Illinois 60606
(312) 724-8035
dlanzito@pjmlaw.com

Attorney for Defendants Smith and HAA

August 1, 2023



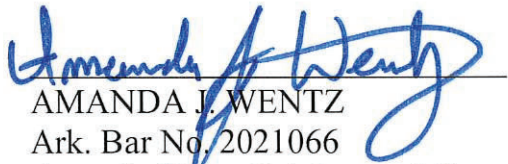
Michael T. Smith, Jr., individually and on
behalf of Health Advisors of America, Inc.

FOR PLAINTIFFS:

FOR THE STATE OF ARKANSAS:

TIM GRIFFIN

Attorney General for the State of Arkansas



AMANDA J. WENTZ

Ark. Bar No. 2021066

Amanda.Wentz@ArkansasAG.gov

Assistant Attorney General

Office of the Arkansas Attorney General

323 Center Street, Suite 200

Little Rock, AR 72201

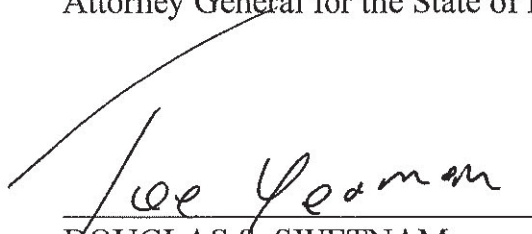
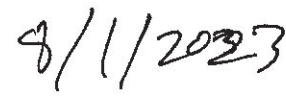
(501) 682-1178

Counsel for Plaintiff

STATE OF ARKANSAS

FOR THE STATE OF INDIANA:

TODD ROKITA
Attorney General for the State of Indiana

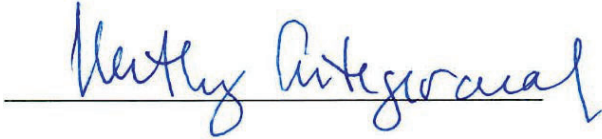
DOUGLAS S. SWETNAM
Indiana Bar No. 15860-49
douglas.swetnam@atg.in.gov
JOSEPH D. YEOMAN
Indiana Bar No. 35668-29
Joseph.Yeoman@atg.in.gov
Deputy Attorneys General
302 West Washington Street
IGCS – 5th Floor
Indianapolis, IN 46204
(317) 232-6294 (Swetnam)
(317) 234-1912 (Yeoman)
(317) 232-7979 (Fax)

Counsel for Plaintiff
STATE OF INDIANA

FOR THE STATE OF MICHIGAN:

DANA NESSEL

Attorney General for the State of Michigan

A handwritten signature in blue ink that reads "Kathy Fitzgerald". The signature is written in a cursive style and is positioned above a horizontal line.

KATHY P. FITZGERALD

Michigan Bar No. P31454

fitzgeraldk@michigan.gov

SCOTT MERTENS

Michigan Bar No. P60069

mertenss@michigan.gov

MICHAEL S. HILL

Michigan Bar No. P73084

Hillm19@michigan.gov

Assistant Attorneys General

Corporate Oversight Division

Michigan Department of Attorney General

P.O. Box 30736

Lansing, MI 48909

Telephone: (517) 335-7632

Facsimile: (517) 335-6755

Counsel for Plaintiff

STATE OF MICHIGAN

FOR THE STATE OF NORTH CAROLINA:

JOSHUA H. STEIN
Attorney General for the State of North Carolina



TRACY NAYER
North Carolina State Bar No. 36964
tnayer@ncdoj.gov
Special Deputy Attorney General
North Carolina Department of Justice
Consumer Protection Division
P.O. Box 629
Raleigh, N.C. 27602
Telephone: (919) 716-6000
Facsimile: (919) 716-6050

Counsel for Plaintiff
STATE OF NORTH CAROLINA

FOR THE STATE OF NORTH DAKOTA:

DREW H. WRIGLEY
Attorney General for the State of North Dakota



PARRELL D. GROSSMAN
North Dakota State Bar No. 04684
pgrossman@nd.gov
Assistant Attorney General
Director
Consumer Protection & Antitrust Division
Office of Attorney General of North Dakota
1720 Burlington Drive, Ste. C
Bismarck, ND 58504
Telephone: (701) 328-5570

Counsel for Plaintiff
STATE OF NORTH DAKOTA

FOR THE STATE OF OHIO:

DAVE YOST

Attorney General for the State of Ohio



ERIN B. LEAHY

Ohio Bar No. 69509

Erin.Leahy@OhioAGO.gov

W. TRAVIS GARRISON

Ohio Bar No. 76757

Travis.Garrison@OhioAGO.gov

Assistant Attorneys General

Ohio Attorney General's Office

Consumer Protection Section

30 E. Broad Street, 14th Floor

Columbus, Ohio 43215

(614) 752-4730 (Leahy)

(614) 728-1172 (Garrison)

Counsel for Plaintiff

STATE OF OHIO

FOR THE STATE OF TEXAS:

ANGELA COLMENERO
Provisional Attorney General for the State of Texas

BRENT WEBSTER
First Assistant Attorney General

GRANT DORFMAN
Deputy First Assistant Attorney General

JAMES LLOYD
Acting Deputy Attorney General for Civil Litigation

RYAN S. BAASCH
Chief for Consumer Protection Division



DAVID G. SHATTO

Fed. Bar No: 3725697

Texas Bar No: 24104114

David.Shatto@oag.texas.gov

C. BRAD SCHUELKE

Texas Bar No. 24008000

Brad.schuelke@oag.texas.gov

KAYLIE BUETTNER

Texas Bar No. 24109082

Kaylie.Buettner@oag.texas.gov

Assistant Attorneys General

Office of the Attorney General

P.O. Box 12548 (MC-010)

Austin, Texas 78711

Telephone: (512) 463-2100

Facsimile: (512) 473-8301

Counsel for Plaintiff
STATE OF TEXAS