

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

_____ County

For Prothonotary Use Only:

Docket No: _____

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

SECTION A

Commencement of Action:

- Complaint Writ of Summons Petition
 Transfer from Another Jurisdiction Declaration of Taking

Lead Plaintiff's Name:
Commonwealth of PA, Office of Attorney General

Lead Defendant's Name:
AGR Group Nevada, LLC et al.

Are money damages requested? Yes No

Dollar Amount Requested: within arbitration limits
(check one) outside arbitration limits

Is this a *Class Action Suit*? Yes No

Is this an *MDJ Appeal*? Yes No

Name of Plaintiff/Appellant's Attorney: Amy L. Schulman, Senior Deputy Attorney General

Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

SECTION B

Nature of the Case: Place an "X" to the left of the ONE case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

TORT (do not include Mass Tort)

- Intentional
 Malicious Prosecution
 Motor Vehicle
 Nuisance
 Premises Liability
 Product Liability (does not include mass tort)
 Slander/Libel/ Defamation
 Other: _____

MASS TORT

- Asbestos
 Tobacco
 Toxic Tort - DES
 Toxic Tort - Implant
 Toxic Waste
 Other: _____

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other

 Employment Dispute: Discrimination
 Employment Dispute: Other

 Other: _____

REAL PROPERTY

- Ejectment
 Eminent Domain/Condemnation
 Ground Rent
 Landlord/Tenant Dispute
 Mortgage Foreclosure: Residential
 Mortgage Foreclosure: Commercial
 Partition
 Quiet Title
 Other: _____

CIVIL APPEALS

- Administrative Agencies
 Board of Assessment
 Board of Elections
 Dept. of Transportation
 Statutory Appeal: Other

 Zoning Board
 Other: _____

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: UTPCPL, 73 P.S. § 201-5

**IN THE COURT OF COMMON PLEAS OF
ALLEGHENY COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA,
By MICHELLE A. HENRY,
ATTORNEY GENERAL,**

Petitioner,

v.

**AGR GROUP NEVADA, LLC and UTILITIES
MARKETING GROUP, LLC**

Respondents.

CIVIL DIVISION

G.D. No. 23-006823

**ASSURANCE OF VOLUNTARY
COMPLIANCE**

Filed on Behalf of Petitioner:

**COMMONWEALTH OF
PENNSYLVANIA, MICHELLE A. HENRY
ATTORNEY GENERAL**

Counsel of Record for this Party:

**Amy L. Schulman
Senior Deputy Attorney General
P.A. I.D. No. 80888**

**1251 Waterfront Place
Mezzanine Level
Pittsburgh, PA 15222
(412) 565-3523**

**IN THE COURT OF COMMON PLEAS
OF ALLEGHENY COUNTY, PENNSYLVANIA**

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v.

**AGR GROUP NEVADA, LLC and
UTILITIES MARKETING GROUP, LLC**

Respondents.

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Michelle A. Henry ("Commonwealth" or "Petitioner"), which caused an investigation to be made into the business practices of AGR Group Nevada, LLC and Utilities Marketing Group, LLC ("Respondents") pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et seq. ("Consumer Protection Law"); the Telemarketer Registration Act, 73 P.S. § 2241 et. seq. ("TRA"), and the Telemarketing Sales Rule, 16 C.F.R. 310 et seq. ("TSR").

PARTIES

WHEREAS, Petitioner is the Commonwealth of Pennsylvania, Office of Attorney General, with offices located at 1251 Waterfront Place, Mezzanine Level, Pittsburgh Pennsylvania 15222 and 15th Floor, Strawberry Square, Harrisburg, Pennsylvania 17120;

WHEREAS, Respondent AGR Group Nevada, LLC is a Nevada limited liability company with a principal place of business located at 2925 N. Green Valley Parkway, Suite C, Henderson, NV 89014;

WHEREAS, Respondent Utilities Marketing Group, LLC is a Florida limited liability

company with a corporate address of 2925 N. Green Valley Parkway, Suite C, Henderson, NV 89014;

BACKGROUND

WHEREAS, Respondents provide third party telemarketing and sales support services to corporate clients, including outbound telesales, and lead generation;

Telemarketing Generally

WHEREAS, Respondents have engaged in trade and commerce within the Commonwealth by conducting and/or initiating “telemarketing”, as that term is defined in Section 2242 of the TRA, 73 P.S. § 2242, on behalf of their corporate clients, mostly in the retail energy supply business¹;

WHEREAS, Respondents, on behalf of their corporate clients, engaged in making “telephone solicitation calls” to Pennsylvania subscribers, as that term is defined in Section 2242 of the TRA, 73 P.S. § 2242²;

WHEREAS, the Commonwealth of Pennsylvania maintains a “do-not-call list,” which is defined in Section 2242 of the TRA, 73 P.S. § 2242, as a “list of residential or wireless telephone subscribers who have notified the list administrator of their desire not to receive telephone solicitation calls;”

¹ “Telemarketing” is defined as “[a] plan, program or campaign which is conducted to induce the purchase of goods or services..., by use of one or more telephones and which involves more than one telephone call.” 73 P.S. § 2242. See also Section 310.2(gg) of the *TSR*, 16 C.F.R. § 310.2(gg). “Telemarketing” is defined as “[a] plan, program or campaign which is conducted to induce the purchase of goods or services..., by use of one or more telephones and which involves more than one telephone call.” 73 P.S. § 2242. See also Section 310.2(gg) of the *TSR*, 16 C.F.R. § 310.2(gg).

² A “telephone solicitation call” is a “call made to a residential or wireless telephone subscriber for the purpose of soliciting the sale of any consumer goods or services or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services.” 73 P.S. §2242.

WHEREAS, pursuant to Section 2245(a)(2) of the TRA, 73 P.S. § 2245(a)(2), it is unlawful to initiate an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the seller whose goods or services are being offered;

WHEREAS, pursuant to Section 2245.2(a) of the TRA, 73 P.S. § 2245.2(a), it is unlawful to initiate or cause to be initiated a telephone solicitation call to a residential telephone number of a residential telephone subscriber who does not wish to receive telephone solicitation calls and has caused his name, address and telephone number to be enrolled on the DNC list;

WHEREAS, under Section 310.4(b)(1)(iii)(B)(1) of the TSR, 16 C.F.R.

§ 310.4(b)(1)(iii)(B)(1), calls can only be made to subscribers on the DNC list if the caller can demonstrate that the seller has obtained the express agreement, in writing, of such person to place calls to that person. Such written agreement shall clearly evidence such person's authorization that calls made by or on behalf of a specific party may be placed to that person, and shall include the telephone number to which the calls may be placed and the signature of that person;

WHEREAS, pursuant to Section 310.4(b)(1)(i) of the TSR, 16 C.F.R. § 310.4(b)(1)(i), it is a violation of the TSR for a telemarketer to cause any telephone to ring, or engage any person in telephone conversation, repeatedly or continuously with the intent to annoy, abuse or harass any person at the called number;

Lead Generation

WHEREAS, Respondents, or third-party vendors retained by Respondents for the purposes of obtaining consumer consent to support their corporate clients, utilized on-line lead generating practices in an effort to obtain consumers' consent to be contacted by Respondents for

purposes of telemarketing solicitation;

WHEREAS, in connection with these lead generating practices, the Commonwealth alleges Respondents, or third-party vendors retained by Respondents to support their corporate clients, attracted consumers to websites with misleading offers of free samples or giveaways in an effort to obtain consumers' consent to be contacted by Respondents for purposes of telemarketing solicitation on behalf of Respondent;

COMMONWEALTH'S ALLEGATIONS

WHEREAS, based upon its investigation, the Petitioner alleges Respondents have engaged in conduct which violates the TRA, TSR and the Consumer Protection Law, as more fully set forth below:

1. Initiating outbound telephone calls to persons that previously stated that they do not wish to receive outbound telephone calls made by or on behalf of Respondent, in violation of Section 2245(a)(2) of the TRA, 73 P.S. § 2245(a)(2);
2. Initiating or causing to be initiated telephone solicitation calls to consumers who registered their names, telephone numbers, and addresses on the DNC list, in violation of Section 2245.2(a) of the TRA, 73 P.S. § 2245.2(a);
3. Making repeated calls to consumers, in violation of Section 310(b)(1)(i) of the TSR, 16 C.F.R. § 310.4(b)(1)(i);
4. Failing to obtain an "express request" from consumers on the DNC list prior to initiating telemarketing calls, as required by Section 2242 of the TRA, 73 P.S. § 2242;
5. Failing to obtain an "express agreement, in writing" to contact consumers who have

registered their phone numbers on the DNC list, as required by Section 310.4(b)(1)(iii)(B)(1) of the TSR, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1), including, but not limited to failing to obtain a written agreement clearly evidencing the consumer's authorization that calls made by or on behalf of a specific party may be placed to the consumer's telephone number;

6. Causing to be used and benefitting from misleading and deceptive acts and practices in connection with requests to be contacted for purposes of telemarketing solicitations;

WHEREAS, Section 2245(a)(9) of the TRA prohibits engaging in any deceptive telemarketing acts or practices in violation of TSR, 73 P.S. § 2245(a)(9);

WHEREAS, a violation of the TRA is a violation of the Consumer Protection Law, 73 P.S. § 2246(a);

WHEREAS, the aforesaid acts and practices constitute "unfair methods of competition" and/or "unfair or deceptive acts or practices," as prohibited by Section 201-3 of the Consumer Protection Law, as defined by Section 201-2(4)(ii), (iii) and (xxi):

1. Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, 73 P.S. § 201-2(4)(ii);
2. Causing likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another, 73 P.S. § 201-2(4)(iii); and
3. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi);

WHEREAS, this Assurance of Voluntary Compliance is accepted by the Commonwealth pursuant to Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5, in lieu of commencing statutory proceedings under Sections 201-4 or 201-8 of the Consumer Protection Law, 73 P.S. §§

201-4, 201-8;

RESPONDENTS' AVERMENTS AND COUNTER DENIALS

WHEREAS, at all times, Respondents voluntarily cooperated with this investigation, notwithstanding the fact they deny they violated any of these laws;

WHEREAS, Respondents purchased the federal and Pennsylvania DNC list ("DNC list") at all times relevant to the within matter and scrubbed all telephone numbers for which they did not have express agreement, in writing approximately every fourteen (14) days. During the relevant time herein, Respondents accessed and downloaded the federal DNC list fifty-six (56) times over twenty-six (26) months and they accessed and downloaded the Pennsylvania DNC list fifty-eight (58) times over ten (10) quarters. Similarly, under Section 2242 of the TRA, the definition of "telephone solicitation call" exempts calls made in response to an "express request" of the residential or wireless telephone consumer," 73 P.S. § 2242;

WHEREAS, Respondents' vendors expressly represent that they "source and develop" all leads in compliance with the Applicable Laws and warrant that (i) all leads provided to Respondents were acquired without fraud, identity theft or any other illegal or illicit means; (ii) all leads were procured pursuant to commercially reasonable practices and procedures designed to prevent the generation of leads that do not comply with Applicable Laws; and (iii) all digital "pages" used to collect leads were prominently linked to vendor's privacy policy which permits the leads to be transferred to Respondent and that is truthful, accurate, sufficient and otherwise in full compliance with Applicable Laws;

WHEREAS, this Assurance is for settlement purposes only, and neither the fact of, nor any provision contained in, this Assurance nor any action taken hereunder, shall constitute, be construed as, or be admissible in evidence as any admission or finding of wrongdoing by

Respondents or any admission of the validity of any claim or any fact alleged in any other pending or subsequently filed action or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Respondents or admission by any Respondents of the validity or lack thereof of any claim, allegation, or defense asserted in any other action;

WHEREAS, Respondents believe that their conduct has been lawful and has not violated any of the Applicable Laws and assert that at all times relied upon the representations, warranties and assurances provided by their vendors including an industry leader in data driven marketing services and lead generation that all leads supplied fully complied with the Applicable Laws; and

WHEREAS, Respondents enter into this Assurance for settlement purposes only.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondents agree for themselves, their successors, assigns, officers, partners, and affiliates, as follows:

- I. The Recitals set forth above are incorporated herein as though fully set forth.**
- II. Agreed Conduct and Affirmative Relief**
 - A.** Respondents acknowledge their obligations to comply with all provisions of the Consumer Protection Law and any amendments thereto.
 - B.** Respondents acknowledge their obligations to comply with all provisions of the TRA and any amendments thereto.
 - C.** Respondents acknowledge their obligations to comply with all provisions of the TSR and any amendments thereto.
 - D.** Respondents shall not make telephone solicitation calls to consumers in violation of Section 2245 of the TRA, 73 P.S. § 2245.

E. Respondents shall not make telephone solicitation calls to consumers, in violation of Section 310(b)(1)(i) of the *TSR*, 16 C.F.R. § 310.4(b)(1)(i).

F. Respondents shall not fail to obtain an “express request” from consumers on the DNC list to receive telemarketing calls, as required by Section 2242 of the *TRA*, 73 P.S. § 2242.

G. Respondents shall not fail to obtain an “express agreement in writing” to contact consumers who have registered their phone numbers on the DNC list, as required by Section 310.4(b)(1)(iii)(B)(1) of the *TSR*, 16 C.F.R. § 310.4(b)(1)(iii)(B)(1).

H. Respondents shall not use or cause to be used misleading and deceptive acts and practices, including the use of direct or implied misrepresentations, in connection with requests to be contacted for purposes of telemarketing solicitations.

III. Monetary Relief

A. **Required Payment-** Upon the execution of this Assurance of Voluntary Compliance, Respondents shall pay to the Commonwealth the sum of ONE HUNDRED FIFTY THOUSAND and 00/100 Dollars (\$150,000.00), reflecting:

1. **Civil penalties** in the amount of ONE HUNDRED FIVE THOUSAND and 00/100 Dollars (\$105,000.00) to be distributed to the Commonwealth of Pennsylvania; and
2. **Costs of the investigation** in the amount of FORTY-FIVE THOUSAND and 00/100 Dollars (\$45,000.00) to be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited into an interest-bearing account from which both principal and interest and shall be expended for public protection and educational purposes.

B. Form of Payment - The above payment shall be in the form of a certified check, cashier's check, or money order made payable to the "Commonwealth of Pennsylvania, Office of Attorney General" and shall be forwarded to Amy L. Schulman, Senior Deputy Attorney General, Commonwealth of Pennsylvania, Office of Attorney General, Bureau of Consumer Protection, 1251 Waterfront Place, Mezzanine Level, Pittsburgh, Pennsylvania 15222.

V. Miscellaneous Terms

A. In accordance with Section 201-5 of the Consumer Protection Law, this Assurance of Voluntary Compliance shall not be considered an admission of violation by Respondents for any purpose. 73 P.S. § 201-5.

B. The "Effective Date" of this Assurance of Voluntary Compliance shall be the day it is filed with the Court.

C. This Court shall maintain jurisdiction over the subject matter of this Assurance of Voluntary Compliance and over Respondents for the purpose of enforcing its terms.

D. Nothing in this Assurance of Voluntary Compliance shall be construed to waive any individual right of action by a consumer or a local, state, federal, or other governmental entity.

E. Time shall be of the essence with regard to Respondents' obligations hereunder.

F. Adolfo Quintero is the Chief Executive Officer/COO of AGR Group Nevada, LLC and certifies that he/she is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf.

G. Adolfo Quintero is the Chief Executive Officer/COO of Utilities Marketing Group, LLC and certifies that he/she is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf.

H. Respondents further agree to execute and deliver all authorizations, documents and instruments which are reasonably necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or after the Effective Date, as defined herein.

I. Respondents understand and agree that if it made any false statement in or related to this Assurance of Voluntary Compliance, that such statement was made pursuant to and under penalty of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities.

J. This Assurance of Voluntary Compliance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurance of Voluntary Compliance may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute as original counterpart hereof.

K. This Assurance of Voluntary Compliance sets forth all the promises, covenants, agreements, conditions, and understandings between the parties, and supersedes all prior and contemporaneous agreements, understandings, inducement or conditions, express or implied. There are no representations, arrangements, or understandings, oral or written, between the parties relating to the subject matter of this Assurance of Voluntary Compliance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance of Voluntary Compliance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

L. Respondents agree by the signing of this Assurance of Voluntary Compliance that they shall abide by each of the aforementioned provisions and that the breach of any one of those terms shall be sufficient warrant for the Commonwealth of Pennsylvania to petition this Court, or

any court of competent jurisdiction, to assess the penalties for proven violations provided under Section 201-8, 201-9, and 201-9.1 of the Consumer Protection Law, and to order any other equitable relief which the Court deems necessary or proper. Respondents encourage the Commonwealth to raise any issues regarding this Assurance to its attention as they intend to fully comply with this Assurance.

M. Any failure of the Commonwealth to exercise any of its rights under this Assurance of Voluntary Compliance shall not constitute a waiver of its rights hereunder.

N. The parties' execution of this Assurance of Voluntary Compliance, along with the full and complete payment of the monetary relief outlined above, shall resolve Petitioner's investigation of Respondent's telemarketing business practices that occurred prior to the execution of this agreement.

{SIGNATURES ON THE FOLLOWING PAGES}

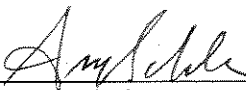
WHEREFORE, intending to be legally bound, the parties have hereto set their hands and seals.

FOR THE PETITIONER:

**COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL**

**MICHELLE A. HENRY
ATTORNEY GENERAL**

Date: 5/23/23

By: 
Amy L. Schulman
Senior Deputy Attorney General

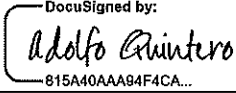
Commonwealth of Pennsylvania
Office of Attorney General
1251 Waterfront Place, Mezzanine Level
Pittsburgh, PA 15222
412-565-3523

FOR THE RESPONDENTS:

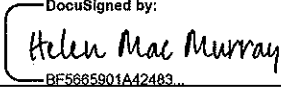
**AGR GROUP, LLC and UTILITIES
MARKETING GROUP, LLC**

Date: 5/19/2023 | 1:17 PM PDT By: 

Adolfo Quintero
Chief Executive Officer/COO
AGR Group Nevada, LLC

Date: 5/19/2023 | 1:17 PM PDT By: 

Adolfo Quintero
Chief Executive Officer/COO
Utilities Marketing Group, LLC

Date: 5/19/2023 | 1:53 PM PDT By: 

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