

Supreme Court of Pennsylvania

Court of Common Pleas Civil Cover Sheet

ALLEGHENY

County

For Prothonotary Use Only:

Docket No:

60 24- -001942

TIME STAMP

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
 Assurance of Voluntary Compliance
 Transfer from Another Jurisdiction
 Declaration of Taking

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

Lead Defendant's Name:
Shoppala, LLC d/b/a Surveys2Cash

Are money damages requested? Yes No Dollar Amount Requested: within arbitration limits outside arbitration limits (check one)

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: _____

CONTRACT (do not include Judgments)

- Buyer Plaintiff
 Debt Collection: Credit Card
 Debt Collection: Other _____
 Employment Dispute: Discrimination
 Employment Dispute: Other _____
 Other: _____

CIVIL APPEALS

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

MASS TORT

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

REAL PROPERTY

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

MISCELLANEOUS

- Common Law/Statutory Arbitration
 Declaratory Judgment
 Mandamus
 Non-Domestic Relations Restraining Order
 Quo Warranto
 Replevin
 Other: UTPCPL 73 P.S. § 201-1 et seq.

PROFESSIONAL LIABILITY

- Dental
 Legal
 Medical
 Other Professional: _____

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

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

Petitioner,

v.

**SHOPGALA, LLC, d/b/a
SURVEYS2CASH,**

Respondent.

CIVIL DIVISION

G.D. No. 24-001942

**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

COMMONWEALTH OF PENNSYLVANIA,
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Respondent.

CIVIL DIVISION

ASSURANCE OF VOLUNTARY COMPLIANCE

AND NOW, comes the Commonwealth of Pennsylvania, by Attorney General Michelle Henry, ("Commonwealth" or "Petitioner"), which caused an investigation to be made into the business practices of Shopgala, LLC, d/b/a Surveys2cash, ("Shopgala" or "Respondent"), pursuant to the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.* ("Consumer Protection Law") and the Telemarketer Registration Act, 73 P.S. § 2241 *et seq.* ("TRA"), and states the following:

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 Shopgala, LLC ("Respondent" or "Shopgala") is a Colorado Limited Liability Company, with a registered address of 1756 Platte Street, Suite 200, Denver, Colorado 80202.

WHEREAS, Respondent Shopgala, LLC also does business under the name “Surveys2cash” a registered fictitious name with the State of Colorado.

BACKGROUND

WHEREAS, Respondent has engaged in trade and commerce in the Commonwealth of Pennsylvania by advertising and marketing promotional offers and opportunities to consumers, such as free samples, in order to acquire consumer data for purposes of lead generation.

WHEREAS, Respondent operates three (3) websites, including www.shopgala.com, www.blog.shopgala.com and www.surveys2cash.com. Attached hereto as Exhibit “XX”.

WHEREAS, Respondent attracts consumers to its websites with offers of free samples or opportunities to be paid for taking on-line surveys.

WHEREAS, in order to gain access to Respondent’s purported offers of free samples or paid survey opportunities, Respondent first requires consumers to register their personal information, including name, address, date of birth, telephone number and email address (“Consumer Data”) on Respondent’s website.

WHEREAS, after registering their “Consumer Data,” consumers had been prompted to voluntarily check a box, which included the following disclosure:

By checking the box I consent to receive phone sales calls or SMS text messages - Msg and data rates may apply - from Shopgala and our marketing partners on the landline or mobile number I provided even if I am on the federal or state do not call registry. I understand these calls and SMS text messages may be generated using an autodialer and may contain pre-recorded messages and that consenting is not required to participate in the offers promoted. I understand that I may revoke consent at any time. Text STOP to opt out and HELP to receive help.

WHEREAS, the above disclosure included a hyperlink to a list of (110) of Respondent's marketing partners.

WHEREAS, a consumer's voluntary checking of the box and providing consent to receive phone calls is not a prerequisite for such consumer's participation in any website offerings.

WHEREAS, after registering their Consumer Data with Respondent, Respondent directs consumers to take a survey, which Respondent represented to consumers was to "match you to the best samples" or to "match you to the top paid surveys."

WHEREAS, Respondent's surveys present consumers with promotional offers from Respondent's marketing partners for purposes of lead generation.

WHEREAS, Respondent does not directly offer or issue free samples or paid survey opportunities to consumers.

WHEREAS, Respondent aggregates and publishes free sample and survey opportunities, which are publicly available to consumers and do not require registration with Respondent for eligibility.

WHEREAS, Respondent fully cooperated with the Commonwealth's investigation into its business and marketing practices.

WHEREAS, based upon its investigation, the Commonwealth alleges Respondent engaged in acts and practices in violation of the Consumer Protection Law, including but not limited to:

1. Failing to clearly and conspicuously disclose to consumers that Respondent is collecting "Consumer Data" for purposes of lead generation;

2. Failing to clearly and conspicuously disclose to consumers that Respondent may share or sell “Consumer Data” to third parties;
3. Failing to clearly and conspicuously disclose to consumers that Respondent is merely an aggregator of free sample offers and paid survey opportunities;
4. Failing to clearly and conspicuously disclose to consumers that registration with Respondent is not required for consumers to access free samples or paid survey opportunities;
5. Misrepresenting to consumers that registration with Respondent’s website is time sensitive, when it is not;
6. Misrepresenting to consumers the availability of certain free samples through the prominent display of popular name brand products on Respondent’s registration webpage;
7. Misrepresenting to consumers an affiliation with popular name brand products;
8. Misrepresenting to consumers that the purpose of Respondent’s consumer survey is to redeem free sample offers or paid survey opportunities, when the purpose of the consumer survey is to gather consumers’ contact information for purposes of lead generation;
9. Failing to obtain an “express request” from consumers to receive telemarketing calls, as required by Section 2242 of the TRA, 73 P.S. § 2242;
10. Failing to obtain an “express agreement in writing” to contact consumers who have registered their phone numbers on the national “do-not-call” registry, as required by Section 310.4(b)(iii)(B)(I) of the Telemarketing Sales Rule, 16 C.F.R. 310 *et seq.*, including, but not limited to:

- a. 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; and
- b. Failing to obtain the consumer's signature.

11. Failing to obtain an "express agreement in writing" from consumers to receive telephone calls delivering a prerecorded message, as required by Section 310.4(b)(v)(A)(i)-(iv) of the Telemarketing Sales Rule, including, but not limited to:

- a. Failing to provide consumers with a clear and conspicuous disclosure that the purpose of the agreement is to authorize receiving telemarketing calls that deliver prerecorded messages, § 310.4(b)(v)(A)(i);
- b. Failing to seek consumers' consent to receive telemarketing calls that deliver prerecorded messages by or on behalf of a specific seller, § 310.4(b)(v)(A)(iii); and
- c. Failing to obtain the consumer's signature, § 310.4(b)(v)(A)(iv).

WHEREAS, Section 2245(a)(9) of the TRA prohibits engaging in any deceptive or abusive telemarketing acts or practices in violation of the Telemarketing Sales Rule, 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 Commonwealth alleges that the acts and practices, alleged herein, 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);
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, the Commonwealth and Respondent seek to conclude the Commonwealth's investigation through Respondent's agreement to the following Assurance of Voluntary Compliance.

WHEREAS, Respondent agrees to comply with the civil laws of the Commonwealth, including its Consumer Protection Law.

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.

RESPONDENT'S COUNTER-DENIAL

WHEREAS, Respondent alleges that it has not violated the Consumer Protection Law, the TRA, or the Telemarketing Sales Rule.

WHEREAS, Respondent has produced to the Commonwealth as part of its investigation documents and legal authority which Respondent alleges indicates that:

- a. Respondent's current websites disclose to consumers that it has no affiliation with the brand names associated with products available through its website offerings;
- b. Respondent's website privacy policies inform consumers that information may be collected from consumers, as well as how that data may be used;
- c. The manner in which consumers provide an express written agreement to be contacted on Respondent's website are fully consistent with the requirements of the Telemarketing Sales Rule and applicable state law; and
- d. Respondent's websites disclose to consumers that provision of consent to be contacted is not a requirement for participation in the offers promoted on the website and, as a result, Respondent did not either know or consciously avoid knowing that any seller or telemarketer which acquired lead data from Respondent initiated outbound calls to consumers in alleged violation of 16 C.F.R. § 310.4 generally or 16 C.F.R. § 310.4(b)(iii)(B) specifically.

SETTLEMENT TERMS

NOW THEREFORE, having conducted trade and commerce within the Commonwealth, Respondent agrees for itself, its successors, assigns, agents, employees and all other persons acting on its behalf, directly or through any corporate or other business device, to the following:

I. The above recitals are incorporated herein as though fully set forth.

II. Definitions

“Clear and Conspicuous” or “Clearly and Conspicuously” means that a statement is difficult to miss (i.e., easily noticeable) and easily understandable, including in all of the following ways:

1. In any communication that is solely visual or solely audible, the statement must be made through the same means through which the communication is presented. In any communication made through both visual and audible means, such as a television advertisement, the statement must be presented in both the visual and audible portions of the communication even if the representation requiring the statement is made in only one means.
2. A visual statement, by its size, contrast, location, the length of time it appears, and other characteristics, must stand out from any accompanying text or other visual elements so that it is easily noticed, read, and understood.
3. An audible statement, including by telephone or streaming video, must be delivered in a volume, speed, and cadence sufficient for consumers to easily hear and understand it.
4. In any communication using an interactive electronic medium, such as the Internet or software, the statement must be unavoidable.
5. The statement must use diction and syntax understandable to ordinary consumers and must appear in each language in which the representation that requires the statement appears.
6. The statement must comply with these requirements in each medium through which it is received, including all electronic devices and face-to-face communications.
7. The statement must not be contradicted or mitigated by, or inconsistent with, anything else in the communication.
8. If a statement is necessary as a modification, explanation, or clarification of

other information with which it is presented, such that its omission could mislead or deceive consumers, it must be presented in close proximity to the information it modifies, explains, or clarifies in a manner so as to be readily noticed or heard and understood.

“Consumer Data” means a Pennsylvania consumer’s personally identifiable information, including name, address, date of birth, telephone number and email address.

III. Injunctive and Affirmative Relief

A. Advertising and Marketing Practices

1. Respondent shall comply with any and all provisions of the Consumer Protection Law and any amendments thereto; and, is permanently enjoined from any violation thereof.
2. Respondent shall clearly disclose to consumers in manner that is easily accessible that Respondent is collecting “Consumer Data” for purposes of lead generation.
3. Respondent shall clearly disclose to consumers in manner that is easily accessible its policies and procedures relating to Respondent’s sharing and selling of “Consumer Data” to third parties.
4. Respondent shall clearly disclose to consumers in manner that is easily accessible that Respondent is an aggregator of promotional offerings, such as free samples and paid survey opportunities.
5. Respondent shall not in any way misrepresent to consumers that registration with Respondent’s website is time sensitive if it is not.

6. Respondent shall not in any way misrepresent to consumers the availability of free sample offers.
7. Respondent shall not in any way misrepresent to consumers an affiliation with any product or service that Respondent does not have.
8. Respondent shall not in any way misrepresent to consumers the purpose of any method or practice used by Respondent to gather "Consumer Data."

B. Telemarketing Related Practices

1. To the extent that Respondent initiates or receives telephone calls to or from a Pennsylvania consumer, it shall comply with any and all provisions of the TRA and any amendments thereto, and is permanently enjoined from any violation thereof.
2. Respondent shall comply with any and all provisions of the Telemarketing Sales Rule and any amendments thereto; and, is permanently enjoined from any violation thereof.
3. Respondent shall not use, sell, transfer or share any Consumer Data for purposes of telemarketing, unless the Consumer Data was acquired in accordance with the requirements set forth under the Telemarketing Sales Rule, including Section 310.4(b)(1)(iii)(B)(1) (requirements for express agreement to receive telemarketing calls for consumers on the "do-not-call" registry) and Section 310.4(b)(1)(v)(A)(i)-(iv) (requirements for consumers' express agreement to receive telemarketing calls with prerecorded messages).
4. When seeking Consumer Data for purposes of sharing or selling such Consumer Data to telemarketers, Respondent shall clearly and conspicuously disclose to

consumers the identification of the specific party or parties for whom consent is sought, without requiring the use of a hyperlink or separate pop-up screen.

5. In accordance with Section 310.4(b)(1)(v)(A)(i)-(iv) of the Telemarketing Sales Rule, Respondent shall not sell, transfer or share any Consumer Data for purposes of delivering telemarketing calls with prerecorded messages.
6. Respondent shall clearly and conspicuously disclose to consumers that they are not required to provide consent to receive telemarketing calls to be eligible to receive or earn any promotional offer or benefit advertised to consumers by Defendants.

C. Consumer Data Usage

1. Respondent shall not use, sell, transfer or share any Consumer Data obtained from Pennsylvania consumers, unless such Consumer Data was acquired in conformance with the injunctive relief set forth herein.

III. Monetary Relief

A. Upon the execution of this Assurance of Voluntary Compliance, Respondent shall pay the Commonwealth the sum of TWENTY FIVE THOUSAND and 00/100 Dollars (\$25,000.00), which shall be allocated as costs of investigation, which shall be deposited into an interest-bearing account from which both principal and interest shall be expended for public protection and educational purposes.

B. **Form of Payment** – The payment set forth above 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.”

V. Miscellaneous Terms

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

B. 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.

C. Time shall be of the essence with regards to Respondent's obligations hereunder.

D. Respondent's signatory is the majority owner of Shopgala, LLC and therefore certifies that he is authorized to enter into and execute this Assurance of Voluntary Compliance on its behalf.

E. Respondent agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance of Voluntary Compliance, whether required prior to, contemporaneous with or subsequent to the Effective Date, as defined herein.

F. Respondent understands and agrees 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.

G. 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.

H. This Assurance of Voluntary Compliance sets forth all of 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.

I. Respondent agrees by the signing of this Assurance of Voluntary Compliance that Respondent shall abide by each of the aforementioned provisions and that the breach of any one of these terms shall be sufficient warrant for the Commonwealth of Pennsylvania to seek penalties provided for under Section 201-8(a) of the Consumer Protection Law, 73 P.S. § 201-8(a), and to seek any other equitable relief which the Court deems necessary or proper, up to and including forfeiture of the right to engage in trade or commerce within the Commonwealth of Pennsylvania.

J. Consistent with Section 201-5 of the Consumer Protection Law, 73 P.S. § 201-5, this Assurance of Voluntary Compliance shall not be considered an admission of violation for any purpose and, as such, is not intended for use by any party for any reason except otherwise provided for by this Assurance or other applicable law.

K. 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.

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

M. If any clause, provision or section of this Assurance of Voluntary Compliance shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Assurance of Voluntary Compliance and this Assurance of Voluntary Compliance shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not be contained herein.

N. Respondent shall not represent or imply that the Commonwealth acquiesces in, or approves of, Respondent's past or current business practices, efforts to improve their practices, or any future practices that Respondent may adopt or consider adopting.

{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: 2/21/2024

By:

 _____


Amy L. Schulman
Senior Deputy Attorney General
PA Attorney I.D. No. 88088

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

For the Respondent:

SHOPGALA, LLC d/b/a SURVEYS2CASH

Date: 2/12/2024

By: 
Vincent P. Villani, Owner

SHOPGALA, LLC d/b/a SURVEYS2CASH

Date: _____

By: 
Counsel for Respondent

Neil E. Asnen, Esquire
Klein Moynihan Turco LLP
450 Seventh Avenue, 40th Floor
New York, New York 10123