IN THE SUPREME COURT OF OHIO

PHILIP J. CHARVAT, Appellant, v. THOMAS N. RYAN, D.D.S., *et al.*, Appellees.	: : : : : : : : :	Case Nos. 06-1647 and 06-1855

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INTRODUCTION AND STATEMENT OF FACTS

Based on the briefing of Appellant Philip J. Charvat ("Charvat"), the Court might be under the mistaken impression that this is a case of telemarketing gone awry – of a business brazenly and blatantly invading the sanctuary of a private citizen. That is not true. Charvat is no stranger to the courts of Ohio, and he is no ordinary private citizen. (*See* SA at 1-8; Ct. App. Doc. No. 24 (Journal Entry Ordering Plaintiff to Show Cause Why This Case Should Not Be Stayed Indefinitely, *Charvat v. Dish TV Now, Inc.* (Franklin County C.P. Dec. 16, 2005), No. 04 CVH 12-13064 at 2) (included in Appendix to Ryan's Appellate Brief at A-164).[1]

On December 9, 2003, Dr. Thomas N. Ryan and Thomas N. Ryan D.D.S., Inc. (collectively referred to as "Ryan") caused a ***single*** prerecorded phone call to be placed to Charvat's residence. Dr. Ryan is the president of Thomas N. Ryan D.D.S., Inc. and has been practicing dentistry at his offices at 17 North Harding Road, Columbus, Ohio for thirty-three years. (SA at 9; Tr. Ct. Doc. No. 35 (Aff. in support of Ryan's Motion for Summary Judgment)). Ryan had never engaged in any telemarketing activity prior to December 2003 – when the call in question occurred. (SA at 16; Tr. Ct. Doc. No. 75 (Notice of Filing of Deposition)).

Prior to engaging in any telemarketing activity, Ryan's office called the Ohio Attorney General's Office. Ryan was informed that that all it had to do was download and honor the Federal Do Not Call List. (SA at 17-19). Even though the Federal Do Not Call List went into effect on October 1, 2003, Charvat had not registered on the Federal Do Not Call List as of January 2005. (SA at 3).

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[1] Citations to "SA" are to items included in Ryan's Supplemental Appendix, attached to this brief. Citations to "Ct. App. Doc. No." are to the court of appeals' docket numbering system and refer to items filed with the court of appeals. Citations to "Tr. Ct. Doc. No." are to the trial court's docket numbering system and refer to items filed with the trial court.

Two weeks after receiving Ryan's call, Charvat affirmatively sought out Ryan on December 22, 2003 and requested a copy of Ryan's Do Not Call policy. Admittedly, Ryan never complied with this request. On January 20, 2004, Charvat filed his complaint. In the complaint, Charvat asked for a total of $7,000 in statutory damages, plus attorney's fees and costs. (SA at 26; Tr. Ct. Doc. No. 8). On April 13, 2004 – less than three months after the complaint had been filed (and almost three years ago) – Ryan offered to settle this case for a total of $6,000. (SA at 28; Tr. Ct. Doc. No. (exhibit to Ryan's joint Memorandum Contra Motion to Compel, to Deem Admissions Admitted and for Sanctions and reply in Support of Motion to Stay Discovery).

There are essentially two issues before the Court. The first is the requisite mental state, or mens rea, a plaintiff must demonstrate in order to satisfy the "knowingly or willingly" standard in 47 U.S.C. § 227(b)(3) of the Telephone Consumer Protection Act ("TCPA"), entitling plaintiff to a *possible* award of treble damages. The second issue is the proper definition of "knowingly" in R.C. 1345.09(F)(2) of the Ohio Consumer Sales Practices Act ("CSPA").

With regard to the TCPA issue, courts have long distinguished between acts that are malum in se, or unlawful on their face, and acts that are malum prohibitum, or unlawful because statute or regulation makes it so. Ryan admittedly caused a single automated phone call to be made to Charvat's home. While many people are justifiably annoyed by telemarketers, making a telephone call is not an inherently immoral act. The TCPA was passed years before the Federal Do Not Call List was implemented. Whatever justification may have existed for allowing treble damages has largely vanished. There is absolutely no need to adopt Charvat's position on this issue, and doing so would only serve to encourage and perpetuate the cottage industry that Charvat and others have developed in prosecuting TCPA cases.

In addition, the CSPA issue is a non-starter. Ryan is not disputing the standard set forth in *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St. 3d 27. Ryan respectfully submits, however, that the court of appeals *correctly* applied *Einhorn*. The court of appeals also correctly determined that the trial court did not abuse its discretion in refusing to award attorney's fees to Charvat. Accordingly, there is nothing to reverse or remand on this matter.

ARGUMENT

I. PROPOSITIONS OF LAW NOs. 1 AND 2: The definition of "willfully or knowingly" in 47 U.S.C. 227(b)(3).

The provision of the TCPA at issue, 47 U.S.C. § 227(b)(3) provides:

> If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

(Emphasis added.) The issue before this Court is the proper definition of "willfully or knowingly." Ryan respectfully requests that willfully or knowingly under § 227(b)(3) should require that the defendant have some sort of culpable mental state.

Both the merit brief of Charvat and the amicus brief of the Attorney General's Office cite a litany of cases indicating that the mens rea of "knowing" generally refers to factual knowledge, as opposed to a culpable state of mind. *See, e.g., Bryan v. United States* (1998), 524 U.S. 184, 192. The cases relied upon, however, are criminal cases and almost all involved malum in se activities.

Black's Law Dictionary defines malum in se as a "a crime or an act that is inherently immoral." (8th Ed. 2004). Similarly, Black's Law Dictionary defines malum prohibitum as an act that is unlawful "merely because it is prohibited by statute, although the act itself is not necessarily immoral." Ohio law has long recognized the distinction between the two. *See, e.g.,*

Taugher v. Taugher (1933), 127 Ohio St. 142, 144 (noting that the doctrine of in pari delicto is not applicable when the subject of the contract is malum prohibitum, rather than malum in se).

In this case, Ryan caused a single phone call to be made to Charvat's residence. This should be contrasted with the defendant in *Bryan* – who used straw purchasers to acquire firearms that he could not have purchased himself and then resold the guns on street corners known for drug dealing. 524 U.S. at 189. There is absolutely no moral equivalency to these acts, and the standard of "knowingly" adopted for a federal gun statute should not be persuasive to the standard Ohio should adopt for 47 U.S.C. § 227(b)(3).

It should also be noted that the "knowingly or willingly" requirement of § 227(b)(3) is to impose ***treble statutory*** damages on a defendant. All violations of the TCPA still result in a $500 statutory penalty per violation, regardless of a defendant's mens rea (or even good faith). 47 U.S.C. § 227(b)(3)(B). Thus, it is not as if requiring a culpable state of mind for treble damages means defendants are getting off lightly (particularly considering the infraction at issue is a phone call).

Presumably, the purpose of the treble damages provision in 47 U.S.C. § 227(b)(3) was to be punitive and act as a deterrent to unwanted telephone solicitations. However, the TCPA was passed in 1991 – years before the Federal Do Not Call List was implemented. Thus, the entire justification for the treble damages provisions – the annoyance of dealing with telemarketers – has been rendered moot by the Do Not Call List.

In this context, Ryan respectfully requests the Court conclude that, to satisfy the "knowingly or willfully" standard under 47 U.S.C. § 227(b), a defendant must have a culpable state of mind. A culpable state of mind does not even have to rise to the level of knowledge that the acts are unlawful. Depending upon the facts of the case, repeated calls to the same individual

after that individual had requested not to be called anymore could qualify. So could a situation in which it could be conclusively established that the defendant should have known the act was unlawful, or if the defendant acted with reckless disregard. Such would be a *fair* standard.

Simply requiring a defendant to know that a phone call was being made, however, would only provide further incentive for needless litigation. For example, a recent decision in the Franklin County Common Pleas Court indicated that, in Franklin County alone, Charvat was the plaintiff in 45 closed civil actions and 8 active cases as of December 2005. (SA at 2). Charvat has previously testified that he maintains two telephone answering machines for the express purpose of recording telemarketing calls while he is away from home and that he has refused to register with the National Do Not Call Registry. (SA at 2-3). "Mr. Charvat's litigation against telemarketers is a cottage industry but, unlike traditional private business, it is done using an extensive amount of the very limited resources available in the public court system." (SA at 4). The court also recognized that such actions "distort the intent of consumer protection laws when [plaintiffs] affirmatively seeks out violations and turns [those] efforts into dozens of lawsuits." (*Id.*)

For all the foregoing reasons, the Court should reject the definition of "knowingly or willingly" urged by Charvat and conclude that, to knowingly or willingly violate 47 U.S.C. § 227(b)(3), a defendant must have a culpable state of mind. And in doing so, the Court should affirm the court of appeals' decision affirming the trial court on this matter.[2]

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[2] To the extent the Court concludes otherwise, Ryan would request that the Court specifically indicate that a knowing or willful violation of 47 U.S.C. § 227(b)(3) does not *automatically* entitle a plaintiff to treble damages, and the a trial court retains its discretion as to whether treble damages are warranted under the facts of this case.

II. PROPOSITION OF LAW NO. 3: The definition of "knowingly" in R.C. 1345.09(F).

Ryan respectfully submits that there is no actual dispute on this matter. Because the court of appeals applied the proper standard, there is nothing for this Court to reverse or remand.

Revised Code 1345.09 discusses the remedies available to a private litigant for a violation of the CSPA. In this regard, R.C. 1345.09(F) provides:

> The court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed, if either of the following apply:
>
> (1) The consumer complaining of the act or practice that violated this chapter has brought or maintained an action that is groundless, and the consumer filed or maintained the action in bad faith;
>
> (2) The supplier has knowingly committed an act or practice that violates this chapter.

(Emphasis added).

Ryan concedes that, pursuant to *Einhorn*, a defendant "does not have to know that his conduct violates the law for the court to grant attorney fees" pursuant to R.C. 1345.09(F). 48 Ohio St. 3d at 30. A "trial court may award a consumer reasonable attorney fees when the supplier in a consumer transaction intentionally committed an act or practice which is deceptive, unfair or unconscionable." *Id.* Ryan has not, and does not, challenge the discretionary authority of the trial court.

In reviewing the decision of the trial court, the court of appeals *correctly* applied *Einhorn*. The court of appeals' analysis on the attorney's fees issue is as follows:

> "Pursuant to R.C. 1345.09(F)(2), a trial court may award a consumer reasonable attorney fees when a supplier in a consumer transaction intentionally committed an act or practice which is deceptive, unfair or unconscionable." *Einhorn v. Ford Motor Co.* (1990), 48 Ohio St.3d 27, 548 N.E.2d 933, syllabus.
>
> Appellant argues that because appellees have admitted that they "knowingly" and "purposely" called appellant with a prerecorded message (Answer, at 1), the trial court erred in refusing to award appellant attorney fees. Appellee argues that even if it knowingly and purposely, or, in the verbiage employed in Einhorn,

> "intentionally" committed a violation of the CSPA, the matter of attorney fees is still committed to the sound discretion of the trial court, and the trial court in the present case did not abuse its discretion. We agree.
>
> In the recent case of *Pep Boys - Manny, Moe & Jack of Delaware, Inc. v. Vaughn*, 10th Dist. No. 04AP-1221, 2006 Ohio 698, we held, "[t]he decision to grant or deny attorney fees under R.C. 1345.09(F) is discretionary. Thus, an appellate court will not disturb the trial court's decision to grant attorney fees absent an abuse of discretion." *Id.* at P32. (Citations omitted.) As we noted earlier, the term abuse of discretion connotes more than an error of law or judgment; it implies the court's attitude was arbitrary, unreasonable, or unconscionable. *State ex rel. Lindenschmidt v. Butler Cty. Bd. of Commrs.* (1995), 72 Ohio St.3d 464, 465, 1995 Ohio 49, 650 N.E.2d 1343. We do not perceive an abuse of discretion in the trial court's denial of attorney fees in this case. Accordingly, appellant's eighth assignment of error is overruled.

(App. at 48-49).

The preceding analysis is entirely correct. The court of appeals correctly recognized *Einhorn* as the controlling authority. The court of appeals also correctly recognized that the trial court retained discretion on whether to actually award attorney's fees. Finally, the court of appeals concluded the trial court did not abuse its discretion. Not only has Charvat failed to demonstrate the court of appeals decision was erroneous in this regard, but Charvat has not even raised this issue on appeal. (The only issue before the Court is the proper definition of "knowingly" under R.C. 1345.09(F).)

Accordingly, Ryan would not object to this Court reaffirming its prior decision in *Einhorn*. In doing so, however, the Court should affirm the court of appeals' actual holding regarding attorney's fees.[3]

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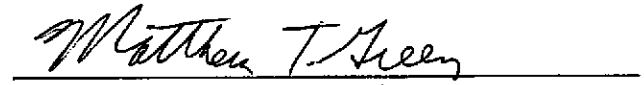
[3] Once again, to the extent the Court concludes otherwise, Ryan would request that the Court specifically indicate that a knowing violation of Chapter 1345 does not *automatically* entitle a plaintiff to attorney's fees, and the a trial court retains its discretion as to whether attorney's fees are warranted under the facts of the case.

CONCLUSION

For the foregoing reasons, the Court should affirm the decision of the court of appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served via regular mail this 28th day of February, 2007, upon the following:

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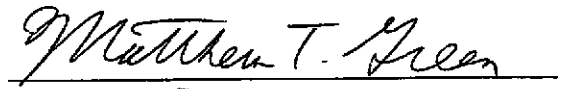

Matthew T. Green

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

PHILIP J. CHARVAT,	:	
Plaintiff,	:	CASE NO. 04CVH12-13064
vs.	:	JUDGE FRYE
DISH TV NOW, INC., et al., Defendants.	:	

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JOURNAL ENTRY
ORDERING PLAINTIFF TO SHOW CAUSE WHY THIS CASE SHOULD NOT BE STAYED INDEFINITELY

This case alleges violations of the Telephone Consumer Protection Act of 1991, 47 U.S.C.§ 227, *et seq.*, the Ohio Consumer Sales Practices Act, R.C. 1345.02(A), and administrative rules adopted pursuant to those laws.

Following a pretrial conference early in the summer, the parties have filled most of three court file folders with papers. In addition to moving for summary judgment on July 25, 2005 on his Sixty Sixth Cause of Action, which asserts that "Defendants materially breached the terms of an enforceable settlement agreement and, in doing so, Defendants violated the Consumer Sales Practices Act, O.R.C. §§1345.01, *et seq.*" (Mot. filed July 25, at p.1.) the parties have hurled attorney disqualification motions at each other.[1] This complicated case, involving a 64 page Second Amended Complaint with a jury demand, allegedly could have been settled for a modest $38,200. (Transcript cited at p. 5 of Defendants' Motion to Disqualify, filed June 16, 2005) For further details about this case, the reader is referred to the Decision filed December 16, 2005 ruling on all of the pending motions.

[1] Due to nonpayment of legal fees and other on-again, off-again issues between defense counsel and their clients, the Court granted defense counsel's "Renewed Motion to Withdraw as Counsel " on September 27. However, as reflected in the other Decision being filed on December 16, the Court denied disqualification in the event counsel decide to appear once again in this case.

Philip J. Charvat is no stranger to litigation seeking penalties for telemarketing infractions. The Court takes judicial notice that commencing with court filings made in 2000 the docket records of just this Court reflect 45 closed civil actions and 8 active cases in all of which Mr. Charvat is the Plaintiff. He is also a litigant in the appellate courts. *e.g., Charvat v. Dispatch Consumer Services, Inc.*, 95 Ohio St.3d 505, 2002-Ohio-2838, and *Charvat v. Crawford* (10th Dist.), 155 Ohio App.3d 161, 2003-Ohio-5891.

Because of the numerous motions filed in this case, the record includes Affidavits from Mr. Charvat, attorney Ferron, and attorney Graden, all executed under oath on July 5, 2005. In addition to his own lawyers, Mr. Charvat believes he has "had direct communications with all of the attorneys in Ohio who represent plaintiffs in lawsuits asserting claims that arise out of certain unwanted telemarketing calls and faxes." (Charvat, ¶ 2) Attorney Ferron subscribes to "several user groups of attorneys in Ohio and other states that are dedicated to the TCPA and other telecommunications consumer protection statutes, including the CSPA" and he communicates with them "on almost a daily basis." (Ferron ¶3) This begins to demonstrate the nature of the ongoing commitment to litigation under the TCPA and the CSPA of this one man.

This Court also learned first hand about Mr. Charvat when it had the privilege of hearing testimony in a comparable case brought by Mr. Charvat, in which he was also represented by Messrs. Ferron and Graden and by their colleague Ms. Wafer. That case went to a jury trial this past January. In hindsight, it proved somewhat more complicated than many jury trials the Court has held since then, due to the need to parse through state and federal administrative regulations defining various different types of telemarketing infractions. That case settled only after three days of trial, just as the jury was returning with its verdict and with detailed answers to dozens of Jury Interrogatories sorting through the myriad of specific complaints by Mr. Charvat under various different regulations. Had that case not settled, additional post-trial proceeding would have been required to assess attorney fees due the Plaintiff, had he been successful with the jury. Appeal might well have followed to a higher court. That trial was typical of cases brought by Mr. Charvat, from everything the Court can determine.

The Court takes judicial notice that Mr. Charvat testified at trial last January that he maintains two telephone answering machines at his home, in an effort to capture every telemarketing call, including even those arriving when he is otherwise absent from home

or on vacation. That was also his practice in 2001, as recorded in the decision in *Charvat v. Crawford*, supra, at ¶4. Most disconcerting, however, is the fact Mr. Charvat had not, as of last January 2005 when he testified before this Court, registered his telephone numbers with the federal "Do Not Call Registry." The Exhibits filed in this lawsuit, concerned with the purported settlement last January, also reflects that Mr. Charvat "will not agree to register his home telephone numbers with the National Do Not Call Registry." Both at trial last January and in his attorney's written statement filed in this case about settlement discussions it has been recorded that Mr. Charvat would not do so because it would forego his right to "continue to enjoy receiving certain types of telemarketing calls and solicitations" merely "to afford protection to the telemarketing scofflaws of the world." (Letter of January 6, 2005 from attorney Graden to attorney Ovsenik, attached to Graden Affidavit filed July 26, 2005)

The laws in this area were created so that consumers were not left "at the mercy of unbridled telemarketing efforts." *Charvat v. Dispatch*, supra, at ¶44. However, these laws were enacted before there was a way for consumers to conveniently opt-out of telemarketing nearly altogether. As explained on the Website of the Federal Trade Commission, the national "Do Not Call Registry" which became available two years ago squarely fits the Plaintiff's needs, if he is only endeavoring to avoid receiving telemarketing calls containing regulatory missteps. Thus, the Registry "puts consumers in charge of the telemarketing calls they get at home. The Federal government created the national registry to make it easier and more efficient for you to stop getting telemarketing calls you don't want."[2] The Consumer & Governmental Affairs Bureau of the Federal Communications Commission published the "Annual Report on the National Do-Not-Call Registry" on September 16, 2005. (FCC CG Docket No. 02-278, report DA 05-2056, available online.) Since October 1, 2003 when the national Registry went into effect some 88 million telephone numbers have been registered, according to that FCC Report.

Still, why should this Plaintiff be compelled to give up a lucrative practice chasing after "telemarketing scofflaws of the world," as his lawyer terms it? There are several reasons. First, although the specific situation presented here is unparalleled in past court decisions, it is a recognized axiom of Ohio law that no one may voluntarily place himself

[2] FTC Website, www.ftc.gov/bcp/conline/edcams/donotcall/index.html (accessed Thursday Dec. 8, 2005).

into a harmful situation merely to generate a damages lawsuit. Second, Plaintiff's lawsuits impose too great a burden on the public court system. Mr. Charvat's litigation against telemarketers is a cottage industry but, unlike traditional private business, it is done using an extensive amount of the very limited resources available in the public court system. Third, Plaintiff distorts the intent of consumer protection laws when he affirmatively seeks out violations and turns his efforts into dozens of lawsuits.

In ancient times there was a maxim "volenti non fit injuria" meaning "he who consents cannot receive an injury." *Black's Law Dictionary*, at 1746 (Rev'd 4th Ed. 1968) Ohio law picked up this maxim recognized in the defense that a plaintiff who "came to a nuisance" could not recover. *Patton v. Westwood Country Club Co.* (8th Dist. 1969), 18 Ohio App.2d 137, 141.[3] The idea that one cannot voluntarily seek injury merely to create or magnify a lawsuit is also reflected in the well known doctrine that a plaintiff, in any kind of lawsuit, must act responsibly to mitigate or minimize any damages. Thus, in a commercial context, every litigant bears an affirmative obligation to take reasonable steps to avert or reduce damages. *F. Enterprises, Inc. v. Kentucky Fried Chicken, Corp.* (1978), 47 Ohio St.2d 154, at paragraphs 3 and 4 of the syllabus. A landlord must do so as well. *Frenchtown Square Partnership v. Lemstone, Inc.*, 99 Ohio St.3d 254, 2003-Ohio-3648, at paragraphs 1 and 2 of the syllabus. A defendant in a case under the UCC cannot be charged with damages that the plaintiff might have avoided with reasonable effort and without undue risk, expense, or humiliation, because such harm either was not caused by the defendant or need not have been caused by the defendant. *Info. Leasing Corp. v. Chambers* (1st Dist.), 2003-Ohio-2670, at ¶ 35. The same logic applies in other types of cases. For instance, in the context of a public school employment dispute, *State ex rel. Stacy v. Batavia Local School Dist. Bd. of Edn.*, 105 Ohio St.3d 476, 2005-Ohio-2974, at ¶47 refers to this "universal rule that a person injured by the act of another is bound to use ordinary diligence to make the damage as light as may be." The same rule applies in bodily injury cases. Indeed, even corrective surgery may be required of an injured person in order to minimize damages over the long run. *Dunn v. Maxey* (9th Dist. 1997), 118 Ohio

[3] Among the decisions cited in *Patton* is *Eller v. Koehler* (1903), 68 Ohio St. 51, 57, 67 N.E. 89, which observed in a nuisance case that "one who becomes a resident of a trading or manufacturing neighborhood, or who remains while in the march of events a residence district gradually becomes a trading or manufacturing neighborhood, should be held bound to submit to the ordinary annoyances, discomforts and injuries which are fairly incidental to the reasonable and general conduct of such business in his chosen neighborhood."

App.3d 665, 669. Finally, the obligation to mitigate damages has been applied in at least one Consumer Sales Practices Act case. *Hinckley Roofing, Inc. v. Motz* (9th Dist.), 2005-Ohio-2404, at ¶23.

There is, to be sure, at least a superficial argument to be made that Mr. Charvat's situation is different. One could assert that he ought not be obligated to register on the Do Not Call list and thereby avoid receiving telemarketing calls in the first instance, since the "harm" occurs only when he becomes a victim of prohibited practices. But, the law's demand that one avoid harm does not depend upon simplistic notions of timing, or who is wrong first. This is recognized because some cases defy convenient classification as to whether they are failure to mitigate cases or contributory negligence cases. *e.g., BP Exploration & Oil Co. v. Maintenance Services, Inc.* (6th Cir. 2002), 313 F.3d 936, 944-47 (Ohio law). In the end, a court is entitled to identify the cause of injury, rather than merely focusing upon the relative timing of the parties' acts. *Id.* As applied here, there would be no harm – or at least far, far less harm - if Mr. Charvat would add his two phone numbers to the 88 million telephone numbers now listed by his fellow citizens on the national Registry.

The second reason to reject Mr. Charvat's stubborn refusal to use the opportunity he has, at no cost, to greatly reduce or eliminate telemarketing calls is derived from the public costs imposed when Mr. Charvat over-uses the court system. An obvious fact deserves mention in considering his right to file an average of more than 10 cases a year. Mr. Charvat holds no public position. He is not a Prosecuting Attorney or the state Attorney General. If he were, then Mr. Charvat's frequent litigation would be viewed differently, and a remedy for excessive litigation would be available at the ballot box or through other democratic checks and balances. As a private citizen, however, no such political restraints exist.

The public cost of Mr. Charvat's conduct can be demonstrated several ways. This Court of Common Pleas has been either the busiest per-judge common pleas court in the State or in second place in recent years. The case filing numbers for 2004 reflect 1648 new filings, transfers and reactivations per judge in Franklin County, exceeded only by Summit County. Supreme Court of Ohio, *2004 Ohio Courts Summary*, Section E, p. 32, (available

electronically from the Court's website.)[4] That yields roughly 140 new cases each month for each of 17 judges. Such a volume leaves judges swimming, at any one time, against a backlog of 650 – 800 pending cases, which normally are quite serious in nature. Otherwise, they would quickly be resolved with guilty pleas or civil settlements. Docket pressures of that kind are a serious concern for the delivery of prompt, quality justice to litigants and a matter of concern for all of the public, who require a court system to promptly address crime for public safety reasons.

Plaintiff's self-imposed litigation must also be viewed against the larger backdrop of the loss of jury trials in over-loaded trial courts across the United States. United States District Judge William G. Young of the District of Massachusetts has written and spoken extensively over the last several years about the "vanishing jury trial." The American Bar Association, the American Board of Trial Advocates, and numerous other groups participated in a combined "Seventh Amendment Summit" meeting earlier this year, in which 150 lawyers and judges from around the nation addressed the "conclusive evidence that the American jury system is dying." Am. Bd. of Trial Advocates, *Voir Dire*, Summer, 2005, at p. 3. Every day in which a trial is held on one of Mr. Charvat's cases is, obviously, a day that cannot be devoted to a trial for someone else – even for the litigant with only a single case in the system in their whole lifetime.

The docket of this Court includes the most serious cases heard anywhere: the death penalty is sought in some; in others parties claim catastrophic bodily injury, or commercial losses, or deprivation of constitutional rights. All must wait. The sheer volume of cases is nearly overwhelming. The undersigned has never worked harder in his professional life of 32 years at the bar than in the last eleven months as a trial judge, and my observation is that my 16 colleagues all work as hard as anyone could ever expect as well. Plainly, no judge of has the luxury of indulging a litigant who enjoys being in Court, and refuses to take reasonable – indeed free and easy – steps to greatly minimize if not totally eliminate his "harm."

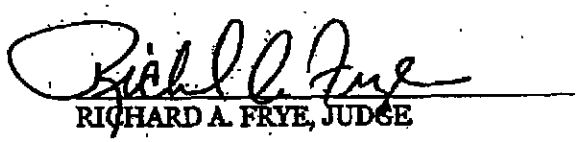
[4] To put such docket numbers in context, faced with this heavy caseload seven of the eight Common Pleas judges in Summit County recently signed a letter warning that excessive caseloads now make it very unlikely that any civil cases can be tried in that Court. Chief Justice Moyer has responded by offering additional visiting judges, according to an article in the Akron Beacon Journal on Thursday Dec. 8. But, regardless of the specifics of Summit County's needs, this independently reflects that heavy caseloads like those also facing this Court leave no room for litigation except as a last resort for the parties.

For these reasons, Plaintiff is hereby directed to show cause on or before December 27, 2005 (when a Final Pretrial Conference is already scheduled) why this case should not be stayed and removed from the active trial docket until he submits an Affidavit attesting to the fact that he has registered all telephone numbers under his custody or control on the national "Do Not Call Registry." According to paragraph one of the Second Amended Complaint, that includes at least two phone numbers. Absent such a showing, which must remain in effect so long as Plaintiff has any civil action pending on the docket of this Court, this Court will not devote additional judicial resources to any case brought by Plaintiff concerned with telemarketing practices.

Plaintiff will no doubt find this order troublesome and perhaps regard it as an infringement upon his "rights." The answer to that notion comes from a thoughtful observer of our legal system. Philip K. Howard has pointed out that we have become "an inverted feudalism in which the rights-bearer, by assertion of legal and moral superiority, lords it over everyone else. Rights-bearers do warfare independent of the constraints of democracy: *Give Us Our Rights*. We cringe, lacking even a vocabulary to respond." Howard, *The Death of Common Sense – How Law Is Suffocating America*, at p. 118 (Random House 1994) (emphasis original).

This Court will not stand by and facilitate the death of common sense in this instance.

IT IS SO ORDERED.



RICHARD A. FRYE, JUDGE

Copies to:

John W. Ferron, Esq.
Leslie Blair Graden, Esq.
Lisa A. Wafer, Esq.
Ferron & Associates
580 North Fourth Street, Suite 450
Columbus, Ohio 43215
Counsel for Plaintiff

Eric L. Zalud, Esq.
Benjamen E. Kern, Esq.
88 East Broad Street, Suite 900
Columbus, Ohio 43215
Counsel for Defendants Dish TV Now, Inc.
Echo Star Communications Corp., U.S.
Satellite Corp. and U.S. Satellite TV Corp.

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

PHILIP J. CHARVAT,	:	
	:	CASE NO. 04 CVH 01-0600
Plaintiff,	:	
v.	:	JUDGE BRUNNER
THOMAS N. RYAN, D.D.S. *et al.*,	:	
Defendants.	:	

AFFIDAVIT OF DR. THOMAS N. RYAN

NOW COMES DR. THOMAS N. RYAN, having been first duly sworn, and states and affirms as follows:

1. I have personal knowledge of the facts contained in this affidavit, and I am competent to testify to the matters stated herein.

2. I am the President of Thomas N. Ryan D.D.S. Inc.

3. I have been practicing dentistry at 17 North Harding Road, Columbus, Ohio for the last thirty-three years.

4. One hundred percent of my gross dollar volume of retail sales at Thomas N. Ryan D.D.S. Inc. involves the sale of dental goods and services.

5. In October 2003, as President of Thomas N. Ryan D.D.S., I entered into a computer hardware and software agreement with a Texas company, Today's Destiny (d.b.a. TNG Systems).

6. TNG's hardware allowed for multiple uses and was designed to provide general office functions.

7. Optional hardware functions I purchased included an automatic dialing apparatus device.

8. As outlined in Philip Charvat's complaint, the following events occurred in relation to a prerecorded telephone message my office delivered to Mr. Charvat on December 9, 2003:

a.) On December 9, 2003, Dr. Ryan's office called Plaintiff's residence by telephone for the purpose of selling personal dental care, services, and/or other goods and services.

b.) The December 9, 2003 telephone call was placed from a phone line assigned to Thomas N. Ryan D.D.S. Inc. by the telephone company.

c.) Thomas N. Ryan D.D.S. Inc. uses the phone to make telephone solicitations.

d.) Thomas N. Ryan D.D.S. Inc.'s telephone call consisted of a prerecorded message.[1]

e.) Thomas N. Ryan D.D.S. Inc.'s telephone call was initiated by automated equipment that caused Charvat's phone to ring.

f.) Thomas N. Ryan D.D.S. Inc. made the call for commercial purposes.

g.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message did not clearly state the name of the business at the beginning of the message.

h.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message did not provide the phone number or address of the business.

i.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message communicated the availability of his dental products and/or services.

j.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message communicated that Charvat could receive information about dental health and dental services.

k.) Thomas N. Ryan D.D.S. Inc. used this call to find new patients.

l.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message was made with the intent to seek a profit.

[1] For a complete transcript of the prerecorded message, see Exhibit 1 attached hereto and incorporated by reference.

m.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message was prepared for commerce.

n.) Thomas N. Ryan D.D.S. Inc.'s prerecorded message was designed for a large market.

o.) Charvat sent Dr. Ryan a letter on December 22, 2003 within which he demanded that Dr. Ryan send him a copy of Dr. Ryan's Do Not Call Maintenance Policy.

p.) Dr. Ryan never sent Charvat a copy of the Do Not Call Maintenance Policy.

q.) Dr. Ryan acted with free will to use automated equipment to place the call to Charvat.

r.) Dr. Ryan intended that his office's equipment call residences.

s.) Thomas N. Ryan D.D.S. Inc. knowingly called residences with the prerecorded message.

t.) Thomas N. Ryan D.D.S. Inc. purposely called residences with the prerecorded messages.

9. Prior to the date of filing this case, all of the following cases were on file in the Ohio Attorney General's office in its Public Inspection File (hereafter "PIF"):

a.) PIF #868, *State ex rel. Celebreezze v. Mosley; Nationwide Promotions.*, 1987.

b.) PIF #1882, *Charvat v. Continental Mortgage Services, Inc.*, June 2, 2000.

c.) PIF #2114, *Charvat v. Oasis Mortgage, Inc.*, September 6, 2002.

10. The complaint is subject to all cases that were on file in the Attorney General of the State of Ohio's office in the Public Inspection Files as of the date of the acts by Defendants that are contained in the complaint.

I hereby state that the above statement is true and correct to the best of my knowledge, information and belief.

Affiant further sayeth naught.

Date: 5-10-04

Dr. Thomas N. Ryan

Sworn to before me and subscribed in my presence, this 10th day of May 2004, n the County of Franklin, in the City of Columbus, in the State of Ohio.

ANNA C. GALLEGER
Notary Public, State of Ohio
My Commission Expires 11/12/08

Notary Public
My commission expires: 11/12/08

Cosmetic1

Hello, this is a public health service announcement concerning the Dental health of the citizens in our community. This is not a commercial solicitation. You will not be ask to purchase anything and you may request all of this information to be mailed to your home, free of charge, so you may review it. You must give permission to hear this message by pressing the 1 key on your phone or you may press the 2 key to be removed from any of our future public service announcements. To participate in this free announcement concerning the Dental health of our community, please press the 1 key now or this call will disconnect in 5 seconds.

Thank you. As a free community service local area doctors have designed a free report that you may receive that can answer any questions you may have concerning dental health.

You can have THAT SMILE THAT YOU ALWAYS WANTED TO HAVE. WITH ADVANCES IN COSMETIC DENTISTRY, THERE IS NO REASON YOU SHOULDNT BE HAPPY WITH YOUR SMILE. YOUR SMILE IS AN IMPORTANT TOOL IN EVERYDAY LIFE. IF YOU DO NOT LIKE THE SMILE YOU HAVE, now you can find out how to change that quick, easily and with absolutely no pain.

Now you can actually laugh at the dentist office.. The goal is to see a dentist with the right combination of expert care and total dedication to patient comfort. Not happy with your smile. You can receive a free report that explains it all, from a local area dentist, who has donated his time for you to make a free appointment to discuss these options , please leave your name, phone number, and the best time to call you so we may provide you with this free report and information.

Thank you, now please state your phone number and the best time to reach you so that one of our assistants can give you a call back (T)

Thanks again for your time, and please accept our wishes for a happy and healthy day.

"This message was brought to you as a community service announcement by..Dr. Ryan at 17 W. Harding ~~in Houston, Texas at 281-555-5555~~" Road Columbus Ohio 614-235-8612.

COPYWRITE TNG SYSTEMS 2003

This free public service announcement, community survey, free report, and any subsequent free consultations or free initial visits are done as a free service for the citizens that requested it, and is not, or intended, nor should be construed as a solicitation, commercial advertisement, sales presentation, and no money or payment has been requested or will be requested by any of the doctors that have voluntarily offered their services as a charity and concerned for citizens in their areas. Even though this program does not fall under the guidelines necessary to comply with the state or federal do not call list, the participants in this free survey and community service have elected to honor the request of the people that have requested not to be called or contacted via mail. This information was requested by you so that you may have the ability to educate yourself on the health areas you requested and have qualified doctors to speak with concerning these issues for free if you so desire. If your name was placed on any state or federal list and you were contacted by this program, it is only because the most current up to date list provided by the state and or the federal do not call list do not include you name as of this contact. These entities usually provide the updates quarterly, and you may be in-between updates. The participants of this

EXHIBIT
1

program are registered with the state and federal program to comply with these request. It is only our intention to educate those that request this information, and provide free services that may have cost citizens in this area a large fee to find out. To have your name added to this programs do not contact list and be removed from any further free community service announcements or phone surveys, you may call the participant that you requested this information from and they will remove you immediately, and place you in their permanent do not call file for a period of 10 years. They will also mail you this do not call request confirmation along with their in writing do not call policy. We wish all of you continued health and prosperity.

1 IN THE COURT OF COMMON PLEAS

2 FRANKLIN COUNTY, OHIO

3 - - -

4 Philip J. Charvat, :
:
5 Plaintiff, :
:
6 vs. :Case No. 04 CVH01-600
:
7 Dr. Thomas N. Ryan, :
DDS, et al., :
8 :
Defendants.:
9

- - -

10

DEPOSITION

11

12 of Thomas N. Ryan, taken before me, Iris I.

13 Dillion, Notary Public in and for the State of

14 Ohio, at the offices of Schottenstein, Zox &

15 Dunn, 250 West Street, Columbus, Ohio, on

16 Tuesday, June 14, 2005, at 11:30 a.m.

17 - - -

18

19

20

21 ARMSTRONG & OKEY, INC.
185 South Fifth Street, Suite 101
22 Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
23 Fax - (614) 224-5724

24 - - -

COPY

1 notice; is that correct?
2 A. Yes.
3 Q. Okay, sir. When did Thomas N. Ryan,
4 D.D.S., Inc., first engage in telemarketing of
5 any kind?
6 A. December of 2003.
7 Q. So the telemarketing activity which
8 your business first engaged in was the
9 telemarketing activity which ultimately gave
10 rise to this instant lawsuit; is that correct?
11 A. Yes.
12 Q. And prior to that time you and your
13 business had pursued other avenues to advertise
14 your goods and services?
15 A. Yes.
16 Q. Prior to engaging in the
17 telemarketing campaign, which is at issue in
18 this lawsuit, what type of advertising did you
19 do on behalf of Thomas N. Ryan, D.D.S., Inc.?
20 A. Contributions to charitable
21 organizations that would use my name, and my
22 local church bulletins, on the back of the
23 weekly bulletin.
24 Q. Any other form of advertising, sir?

1 knowledge of State and Federal law in light of
2 the contract.
3 MR. GRADEN: Well, do you intend to
4 provide the contract?
5 MR. ZETS: I'm prepared for him --
6 Dr. Ryan is prepared to answer questions about
7 his knowledge of State and Federal law.
8 Q. You signed a contract with TNG,
9 correct, sir?
10 A. Yes.
11 Q. Were there any representations in
12 the contract you signed with TNG with respect to
13 the legality of pre-recorded telemarketing
14 campaigns?
15 A. I don't remember.
16 Q. You're not aware of any specific
17 representations in that contract with respect to
18 that issue?
19 A. No, I'm not.
20 Q. You didn't rely on anything
21 contained in the TNG contract in making your
22 decision to engage in a pre-recorded
23 telemarketing campaign, did you?
24 A. I was under the opinion that if you

1 downloaded and honored the Federal Do Not Call
2 List, that was all that was necessary.
3 Q. What was the source of that
4 information, sir?
5 A. The Attorney General's Office of the
6 State of Ohio.
7 Q. What did you do prior to engaging in
8 the telemarketing campaign which I believe your
9 testimony was you started in December, 2003?
10 What did you do prior to December 2003 to
11 investigate what Federal or State law was
12 governing pre-recorded telemarketing campaigns?
13 A. In November of 2003 our office
14 called the Attorney General's Office and was
15 told that all we had to do was download the
16 Federal Do Not Call List and honor that, and we
17 were fine.
18 Q. Was that the Ohio Attorney General's
19 Office, sir?
20 A. Yes.
21 Q. Okay. You did not personally make
22 that call, correct?
23 A. No, I didn't.
24 Q. Do you know who did?

1 A. Yes, I do.
2 Q. What was his or her name?
3 A. Penny Fyffe, F-y-f-f-e.
4 Q. Is she still employed by you, sir?
5 A. Yes.
6 Q. What is her position at the company?
7 A. Office manager.
8 Q. Other than having Ms. Fyffe contact
9 the Ohio Attorney General's Office did you or
10 anyone employed by you do anything else to
11 determine what Federal or State law required of
12 an individual and business engaged in a
13 pre-recorded message telephone campaign?
14 A. No.
15 Q. Did you contact counsel at any time
16 prior to engaging in this telemarketing
17 campaign?
18 A. No.
19 Q. Your first communication with
20 counsel with regard to the Telephone Consumer
21 Protection Act of 1991 or the Ohio Consumer
22 Sales Practices Act would have been subsequent
23 to the initiation of this lawsuit?
24 A. Yes.

1 Q. You testified a few moments ago that
2 Ms. Fyffe was advised by the Ohio Attorney
3 General that if a telemarketer obtained the
4 National Do Not Call List and refrained from
5 calling names on that list, that that was all
6 that was required of them to comply with Federal
7 or State law?
8 A. Yes.
9 Q. Did you obtain or subscribe to the
10 National Do Not Call registry?
11 A. Yes.
12 Q. Do you recall when you did that,
13 sir?
14 A. Well, before we put this system into
15 action which was December of 2003, so we
16 downloaded it probably sometime in November of
17 2003.
18 Q. Prior to the filing of this lawsuit,
19 which was January 20, 2004, had you read the
20 Telephone Consumer Protection Act of 1991?
21 A. No.
22 Q. Prior to January 20, 2004, had you
23 read the Ohio Consumer Sales --
24 MR. ZETS: Practices.

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
Civil Division

PHILIP J. CHARVAT 636 Colony Drive Westerville, Ohio 43081-3616 (614) 895-1351 Plaintiff, v. Dr. Thomas N. Ryan, D.D.S. 17 North Harding Road Columbus, Ohio 43209 AND Thomas N. Ryan DDS, Inc. 17 North Harding Road Columbus, Ohio 43209 Defendants.	)	**Case No.** 04CVH01 600 Classification: H—Other Civil **COMPLAINT** Jury Demand Endorsed Hereon JUDGE:

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY, OHIO
2004 JAN 20 AM 9:40
CLERK OF COURTS

Jurisdiction

1. This cause is before this Court pursuant to the Communications Act of 1934 as amended at Title 47 United States Code § 227 (b), the Telephone Consumer Protection Act ("TCPA"); Ohio Revised Code § 1345.01 et seq., the Ohio Consumer Sales Protection Act ("CSPA"); Title 47 Code of Federal Regulation § 64.1200, the FCC's TCPA regulations, and the Ohio Administrative Code, § 109:4-3-11 (A) (1).

2. This Court has subject matter jurisdiction pursuant to the above statutes.

3. The parties either reside or have minimum contacts in Franklin County, Ohio.

4. The parties are not suffering under any legal disabilities.

5. All pertinent activities took place within this Court's Jurisdiction.

6. This Court has personal Jurisdiction over the Defendants.

7. Pursuant to Ohio Civil Rule 3 this Court is of proper venue.

Parties

8. The Plaintiff, Philip J. Charvat, hereinafter "Plaintiff," is a resident of Westerville, Franklin County, Ohio where he is provided with local telephone services.

9. The Defendants are Dr. Thomas N. Ryan, D.D.S. and Thomas N. Ryan DDS, Inc., hereinafter "Defendants" or "Ryan" and named and unnamed agents of any of them.

10. The Defendants promote and/or provide goods and/or services in Franklin County, Ohio for personal, family, or household purposes.

11. The Defendants engage in the above activities, for a profit, via the telephone.

Acts of Agents

12. Whenever it is alleged in this complaint that Defendants did any act, it is meant that Defendants performed or participated in the act; or that Defendants' officers, agents or employees performed or participated in the act on behalf of and/or under the authority of Defendants; or the Defendants ratified and/or accepted the benefit of an act.

Facts

13. Prior to the date of the call that gives rise to this case, all of the following cases were on file in the Ohio Attorney General's office in its Public Inspection File (hereafter "PIF"):

PIF #868, *State ex rel. Celebrezze v. Mosley; Nationwide Promotions.*, 1987;

(Re: Liability for failure to reveal the purpose of a contact is to make a sale)

PIF #1882, *Charvat v. Continental Mortgage Services, Inc.*, June 2, 2000.

(Re: Liability for violation of TCPA regulations)

PIF #2114, *Charvat v. Oasis Mortgage, Inc.*, September 6, 2002;

(Re: Liability for violation of FCC's TCPA prerecorded call regulations)

14. This complaint is subject to all cases that were on file in the Attorney General of the State of Ohio's office in the Public Inspection Files as of the date of the acts by Defendants that are contained in this complaint.

15. On or about 12/9/2003 (and possibly other dates to be determined in discovery), Defendants called the Plaintiff's residence by telephone for the purpose of selling personal dental care services, and/or other goods and services.

16. The call of 12/9/2003 was placed from a phone line assigned to Defendant Ryan by a telephone company.

17. The Defendants use the phone to make telephone solicitations.

18. The Defendants' telephone call consisted, at least partially, of a prerecorded message(s).

19. The Defendants' telephone call was initiated by automated equipment that caused the Plaintiff's phone to be rung.

20. The Defendants made the call(s) for commercial purposes.

21. The Defendants' prerecorded message did not clearly state the name of the business at the beginning of the message.

22. The Defendants' prerecorded message did not provide the phone number or address of the Defendants' business.

23. The Defendants' prerecorded message communicated the availability of the Defendants' products and/or services.

24. The Defendants' prerecorded message communicated that the Plaintiff could receive information about dental health and dental services.

25. The Defendants use such calls to find new patients for their business.

26. The Defendants' prerecorded message was made with the intent to seek profit.

27. The Defendants' prerecorded message was prepared for commerce.

28. The Defendants' prerecorded message was designed for a large market.

29. The Plaintiff sent a letter to Ryan on December 22, 2003 within which the Plaintiff demanded that the Defendants send to the Plaintiff a copy of the Defendants' Do Not Call (hereafter "DNC") Maintenance Policy.

30. Ryan refused, and continues to refuse, to send the Defendant's Do Not Call Maintenance Policy to the Plaintiff.

31. The Defendants acted of free will to use automated equipment to place the call(s).

32. The Defendants intended that their equipment call residences.

33. The Defendants knowingly called residences with the prerecorded message(s).

34. The Defendants purposely called residences with the prerecorded message(s).

FIRST CAUSE OF ACTION

35. Count one includes the allegations in paragraphs 1. through 34. as if rewritten here.

36. The Defendants' call to Plaintiff was a "telephone solicitation" as defined in the TCPA.

37. The Defendants' message was an "unsolicited advertisement" as defined in the TCPA.

38. The Defendants are users of public telephonic services.

39. The Plaintiff has been statutorily damaged by $500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without his prior expressed consent.

40. The Plaintiff has been additionally statutorily damaged by $1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message without his prior expressed consent because the calls were knowingly or willfully made to the Plaintiff.

41. The Plaintiff has been statutorily damaged by $500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the name of the business making the call.

42. The Plaintiff has been additionally statutorily damaged by $1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message which did not state the name of the business making the call because the calls were knowingly or willfully made to the Plaintiff.

43. The Plaintiff has been statutorily damaged by $500.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the phone number or address of the business making the call.

44. The Plaintiff has been additionally statutorily damaged by $1000.00 for each instance of Defendants calling the Plaintiff with a prerecorded message which did not state the phone number or address of the business making the call because the calls were knowingly or willfully made to the Plaintiff.

45. The Plaintiff has been statutorily damaged by $500.00 for each instance of the Defendants failing to send the Defendants' DNC policy to the Plaintiff.

46. The Plaintiff has been additionally statutorily damaged by $1000.00 for each instance of Defendants failing to send the Defendants' DNC policy to the Plaintiff because the failures were knowing or willful acts.

SECOND CAUSE OF ACTION

47. Count two includes the allegations in paragraphs 1. through 46. as if rewritten here.

48. The Defendants' calls are "consumer transactions" as defined in the CSPA.

49. The Defendants are "suppliers" as defined in the CSPA.

50. The Plaintiff is a "consumer" as defined in the CSPA.

51. The Defendants' business has made at least two interstate telephone calls.

52. The Plaintiff has been statutorily damaged by $200.00 for each instance of the Defendant calling the Plaintiff and/or the Plaintiff's residence with a prerecorded message without the Plaintiff's prior expressed consent.

55. The Plaintiff has been statutorily damaged by $200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the name of the business making the call.

56. The Plaintiff has been statutorily damaged by $200.00 for each instance of the Defendants calling the Plaintiff with a prerecorded message without stating the phone number or address of the business making the call.

57. The Plaintiff has been statutorily damaged by $200.00 for each instance of the Defendants failing to send their Do Not Call Maintenance Policy to Plaintiff upon demand.

58. The Plaintiff has been statutorily damaged by $200.00 for each instance of the Defendants' failure to state, at the beginning of a solicitation, that the purpose of the call was to make a sale.

WHEREFORE, the Plaintiff demands:

1. A judgment against Defendants in the amount of $6,000 on his first cause of action and $1,000 on his second cause of action for a total amount of $7,000.

2. A judgment against Defendants in an amount equal to his reasonable attorney fees and costs in this action and ordering Defendants to pay any remaining costs of this action.

3. A permanent injunction against Defendants prohibiting them from soliciting any consumer via a telephone call in violation of any of the FCC's TCPA regulations and the Ohio CSPA.

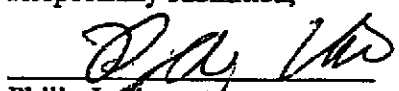
4. That the Court order the Defendants to pay reasonable attorney fees in this action pursuant to the CSPA.

5. That the Court order the Defendants to pay the costs of this action.

6. Such other relief to which he may be entitled at law or in equity.

Plaintiff Demands a jury trial on all issues.

Respectfully submitted,



Philip J. Charvat
636 Colony Drive
Westerville, Ohio 43081-3616
(614) 895-1351
Plaintiff in Pro Per

SCHOTTENSTEIN
ZOX&DUNN CO.,LPA

BRIAN M. ZETS
614/462-2244
E-MAIL: BZETS@SZD.COM

13 April, 2004

Via Fax to (614) 228-3255
(Courtesy copy via U.S. Mail)
Leslie Blair Graden, Esq.
FERRON & ASSOCIATES
580 North Fourth Street
Columbus, Ohio, 43215-2125

Re: *Charvat v. Thomas N. Ryan, DDS at al.*
Case No. 04 CVH 01-600
Settlement offer

Dear Leslie:

As Judge Brunner requested, John McDonald and I spoke with Dr. Ryan and recommended settlement as outlined by the Court. Dr. Ryan has agreed to settle this litigation for $6,000, including **all damages, attorney fees, costs, expenses, and interest.** If your client has accepted this recommendation as well, please advise and I will prepare a basic release and dismissal order with prejudice.

Sincerely,

Brian M. Zets

cc: Judge J. Brunner (via facsimile only)

v.SZD.com
Columbus
Cleveland
Cincinnati

250 West Street, Columbus, Ohio 43215-2538 | P.O. Box 165020, Columbus, Ohio 43216-5020 | Voice: 614-462-2700 | Fax: 614-462-5135