STATE OF VERMONT

SUPERIOR COURT **WASHINGTON UNIT**	**CIVIL DIVISION** **DOCKET NO.**

STATE OF VERMONT,)
)
Plaintiff,)
)
v.)
)
KARABELL INDUSTRIES, LLC, and)
ELI B. KARABELL,)
)
Defendants.)

STATE OF VERMONT'S MOTION FOR PRELIMINARY INJUNCTION

NOW COMES the State of Vermont, and pursuant to Vermont Rule of Civil Procedure 65(b)(1) and 9 V.S.A. § 2458(a), moves this Court for preliminary relief to enjoin Eli Karabell ("Mr. Karabell") and Karabell Industries, LLC ("Karabell Industries") (collectively "Defendants") from engaging in any telemarketing business in Vermont, including any contact and solicitation of Vermont residents.

This Court should grant this Motion for Preliminary Injunction because Defendants are harassing and threatening Vermont legislators, which is taking away from their time and work on behalf of the public. Defendants have repeatedly called state legislators, including those on the Do Not Call Registry; at late hours from 11pm-3am; pressuring them to sign contracts for bizarre "consulting" services for thousands and millions of dollars; speaking in erratic, rude and yelling tones;

and threatening to continue contacting them if they do not pay the rates demanded. Defendants have ignored the Attorney General's cease-and-desist letter and continue their conduct. In furtherance of this Motion for Preliminary Injunction, the State of Vermont submits the following Memorandum of Law.

MEMORANDUM OF LAW

A. Factual Background

Eli Karabell identifies himself as the "President of Karabell Industries." *See* Affidavit of Shelley Facos ("Facos Aff.") ¶ 4, Exhibit 1, "Karabell Emails" at page 16. Defendants purport to offer "lobbying" and "government consulting" services. *Id.* at 8. Defendants' website describes an array of vague "political services," "entertainment-oriented," "e-commerce solutions," and "eco-friendly" services, while also selling toilet paper, sanitary masks, disinfectant, and hand sanitizer.[1]

On or around February 1, 2022, Defendants began a campaign of harassing telemarketing phone calls to numerous Vermont state legislators. According to the investigation of the Montpelier Capitol Police, at least 18 legislators were called between the hours of 11pm and 3am. *See* Facos Aff. ¶ 5, Exhibit 2. The calls were "back-to-back," up to fifteen in a row. *Id.* at 1. When answered, several legislators described "rude and yelling" behavior from Mr. Karabell and threats to keep calling if they did not purchase a "political marketing product." *Id.*

[1] www.karabellindustries.com.

After the phone calls, Defendants sent follow-up emails to these legislators for "Political Consulting Packages" and attaching documents of "Price Sheets." *Id.* These emails requested payment for services at rates ranging from $80,500 per hour to $18,850,000 per month. Facos Ex. 1 at 4.

As reported by VT Digger, Defendants called a legislator on her personal cell phone at 3am, which got "progressively more aggressive." *See* Facos Aff. ¶ 6, Exhibit 3 (describing numerous other aggressive phone calls and telling one legislator that "you're the seven deadly sins of politics").

As per one example, Rep. Vicki Strong from the Orleans-Caledonia District experienced numerous harassing and unwanted solicitation phone calls and emails, despite being on the federal Do Not Call Registry. Affidavit of Vicki Strong ¶ 4 ("Strong Aff."). Defendants' first phone call to Rep. Strong was after 11pm at her home in early February. *Id.* ¶ 5. Rep. Strong answered, thinking it was an emergency and then realized it was an unwanted telemarketing call. *Id.*

Over the next few weeks, Defendants continued to call and email Rep. Strong, speaking "incessantly" and pressuring her to sign a contract for their services at exorbitant rates (such as $80,500 per hour or "demand[ing]" $48 billion). *Id.* ¶¶ 6-9; Facos Ex. 1 at 6. Rep. Strong declined Defendants' offers and asked not to be contacted but Defendants ignored her requests. Strong Aff. ¶¶ 8-10. At least one phone call came from a disguised phone number and name. *Id.* ¶ 10.

In the phone calls, Mr. Karabell described himself as "a billionaire" with "houses and boats everywhere" and "a billion-dollar company helping billions of

people get elected." *Id.* ¶ 7. Throughout the solicitations, Rep. Strong has experienced oppression, harassment and anxiety because Mr. Karabell knew her personal voting record and other details, and she was anxious as to what other information he would use to pressure her into signing a contract. *Id.* ¶ 11.

As public officials, it is difficult for legislators like Rep. Strong to simply ignore Mr. Karabell or hang up on him, because legislators have a duty to respond to public inquiries. *Id.* ¶ 12.

On February 9, 2022, the Vermont Attorney General's Office sent a cease-and-desist letter to Defendants outlining Defendants' illegal conduct and requesting immediate cessation. Facos Aff. ¶ 7, Exhibit 4.

However, Defendants ignored the letter and continue to contact Rep. Strong, as recently as sending an email for another phone call on Saturday March 26, 2022. Strong Aff. ¶ 14.

Defendants have engaged in the same conduct elsewhere. *See* Facos Aff. ¶ 8, Exhibit 5 (Idaho injunction for attempting to collect invoices from state legislators, and ordering civil penalties of $10,000 and $780 in costs).

Therefore, an injunction is necessary here to address Defendants' conduct.

B. Argument

I. Applicable Standards for an Injunction

Title 9 V.S.A. § 2458(a) empowers the Attorney General to seek a preliminary or permanent injunction to restrain violations of the Vermont Consumer Protection Act ("CPA"). The statute articulates two factors for requesting an injunction –

reasonable belief that the CPA has been violated, and reasonable belief that proceedings would be in the public interest:

> Whenever the attorney general . . . has reason to believe that any person is using or is about to use any method, act or practice declared by section 2453 of this title to be unlawful . . . and that the proceedings would be in the public interest, the attorney general . . . may bring an action in the name of the state against such person to restrain by temporary or permanent injunction the use of such method, act or practice . . . . The courts are authorized to issue temporary or permanent injunctions to restrain and prevent violations of this chapter . . . .

9 V.S.A. § 2458(a).

Per section 2458(a), the State may seek either a temporary or permanent injunction. At this time, the State seeks a preliminary injunction. A preliminary injunction is necessary now because Defendants' conduct is ongoing and is a significant interference to the vital public work of Vermont legislators.

Further, because "[t]his is a case in which an injunction is expressly authorized by statute." *Minnesota ex rel. Hatch v. Sunbelt Commc'ns & Mktg.*, 282 F. Supp. 2d 976, 979 (D. Minn. 2002), the Court need only consider the action's likelihood of success on the merits.[2] *See United States v. Estate Pres. Servs.,* 202 F.3d 1093, 1098 (9th Cir. 2000) (noting "the traditional requirements" for injunctive relief "need not be satisfied" where injunction is expressly authorized by statute); *Henderson v. Byrd*, 133 F.2d 515, 517 (2d Cir. 1943) ("The contention that the

[2] The traditional factors for granting a motion for preliminary injunction are: (1) the threat of irreparable harm to the movant, (2) the potential harm to the other parties, (3) the likelihood of success on the merits, and (4) the public interest. *In re J.G.,* 160 Vt. 250, 255-56 n.2 (1993); *see also* 11A Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d § 2948 at 131-33 (1995).

plaintiff failed to prove the existence of the usual equitable grounds for relief, such as irreparable damage, is plainly irrelevant. Where an injunction is authorized by statute, it is enough if the statutory conditions are satisfied."); *United States v. Weingold*, 844 F. Supp. 1560, 1573 (D. N.J. 1994) ("Proof of irreparable harm is not necessary for the Government to obtain a preliminary injunction.").

Further, under the doctrine of statutory injunctions, it is presumed that statutory injunctions are in the public interest. *People ex rel. Hartigan v. Stianos*, 475 N.E.2d 1024, 1027-28 (Ill. App. Ct. 1985). *See also Webster v. Milbourn*, 759 S.W.2d 862, 864 (Mo. Ct. App. 1988) (potential harm to the public is presumed once court finds that defendant has engaged in unlawful trade practices).

Therefore, the only factor for analysis is whether the State can show a likelihood of success that Defendants violated Vermont law, which the State proves below.

II. Defendants Have Violated the Consumer Protection Act

A. Overview of the CPA

The CPA prohibits "unfair or deceptive acts or practices in commerce." 9 V.S.A. § 2453(a). The CPA is a remedial statute, to be interpreted liberally to accomplish its purpose of protecting consumers and ensuring an honest and fair marketplace. *Carter v. Gugliuzzi*, 168 Vt. 48, 52, 716 A.2d 17, 21 (1998).

In interpreting the Act, Vermont courts are "guided by the construction of similar terms contained in . . . the Federal Trade Commission [FTC] Act and the courts of the United States." 9 V.S.A. § 2453(b).

Under the CPA, "unfairness" and "deception" are two separate prohibitions. *Dernier v. Mortgage Network, Inc.*, 195 Vt. 113, 87 A.3d 465, 2013 VT 96, ¶ 55.

The Vermont Supreme Court has recognized three independent criteria for determining whether a practice is **unfair**:

> "(1) whether the practice, without necessarily having been previously considered unlawful, offends public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness; (2) whether it is immoral, unethical, oppressive, or unscrupulous; (3) whether it causes substantial injury to consumers . . . ."

Christie v. Dalmig, Inc., 136 Vt. 597, 601, 396 A.2d 1385, 1388 (1979) (quoting *FTC v. Sperry & Hutchinson Co.* ("*Sperry*"), 405 U.S. 233, 244 n.5 (1972)).

It is not necessary that all three criteria be met so long as the practice is "exploitive or inequitable" or "is seriously detrimental to consumers or others." *Sperry*, 233 at 244 n.5. *See also Christie*, 136 Vt. at 601.

B. Defendants' Unfair Acts

Defendants have repeatedly called state legislators, including those on the Do Not Call Registry; at late hours from 11pm-3am; pressuring them to sign contracts for bizarre "consulting" services for thousands and millions of dollars; speaking in erratic, rude and yelling tones; and threatening to continue contacting them if they do not pay the rates demanded. This conduct constitutes two separate unfair acts under the CPA.

First, it violates the public policy as expressed in the federal FTC's Telemarketing Sales Rule ("TSR") against unwanted telemarketing calls.[3] The TSR established a federal "Do Not Call Registry," prohibiting solicitation calls absent consent and other limited exceptions. 16 C.F.R. § 310. Specifically, Defendants have violated the TSR in the following four ways:

1. Defendants violated 16 C.F.R. § 310.4(b)(1)(iii)(3)(B) by calling Rep. Strong who is on the Do Not Call Registry. Strong Aff. ¶ 4.

2. Defendants violated 16 C.F.R. § 310.4(c) by calling residential phone lines outside the hours of 8am-9pm. Strong Aff. ¶ 5; Facos Ex. 2 at 1; Facos Ex. 3 at 1.

3. Defendants violated 16 C.F.R. § 310.4(b)(1)(iii)(3)(A) by contacting Rep. Strong after she requested them to stop. Strong Aff. ¶¶ 8-10.

4. Defendants violated 16 C.F.R. § 310.4(b)(1)(i) by "repeated or continuous" contact of state legislators with the intent to "annoy or harass." Strong Aff. ¶¶ 9-12; Facos Ex. 3 at 1.

As set forth above, an unfair act includes one that "offends public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common-law, statutory, or other established concept of unfairness." *Christie*, 136 Vt. at 60.

Further, Vermont courts look to the FTC authorities, like the TSR, as evidence of a *per se* CPA violation. 9 V.S.A. § 2453(b); *see also Villella v. Public Employees Mut. Ins. Co.*, 106 Wash.2d 806, 820 (Wash. 1986) ("A per se unfair

[3] Defendants have also violated the FCC "Do Not Call" Rule, 47 C.F.R. § 64.1200. However, because this Rule has substantially similar requirements as the TSR, it is not necessary to adjudicate it as a separate violation, provided that the TSR requirements are adjudicated.

trade practice exists when a statute has been violated and such violation has been declared by the Legislature to constitute an unfair or deceptive act in trade or commerce.").

Therefore, Defendants' conduct is first unfair under the CPA (Count I of the Complaint) because it violates and offends the statutory policies and principles as expressed under the federal TSR.

Second, Defendants' conduct is also unfair because it is "immoral, unethical, oppressive, or unscrupulous." *Christie*, 136 Vt. at 601. The sum total of Defendants' conduct unquestionably meets this standard:

- Defendants repeatedly called state legislators at late hours up to 3:00am, when a person only expects emergency calls. Facos Ex. 2 at 1; Strong Aff. ¶¶ 4-6.
- Defendants were "rude and yelling," Facos Ex. 2 at 1, "progressively more aggressive," Facos Ex. 3 (telling one legislator that "you're the seven deadly sins of politics"); and spoke "incessantly" and "compulsively" so as to prevent interruption. Strong Aff. ¶ 7; Facos Ex. 2 at 1.
- Defendants threatened and pressured legislators into signing contracts for vague "consulting" services at exorbitant rates up to $80,500 per hour or even demanding $48 billion. Facos Ex. 1 at 2, 4; Strong Aff. ¶¶ 6-9.

- Defendants ignored requests to stop, including a formal cease-and-desist letter from the Attorney General. Strong Aff. ¶ 14; Facos Ex. 4.

The above conduct is immoral and unscrupulous and thus unfair under the second prong of the CPA. It is particularly offensive because it distracts public officials from their vital legislative work. Strong Aff. ¶¶ 11-12.

Therefore, the State is likely to prevail on its claim in Count One of the Complaint, and an injunction is warranted.

III. Defendants Have Violated Vermont's Telemarketing Law

The Vermont Telephone Solicitation Act regulates telephone solicitations in Vermont. 9 V.S.A. § 2464a.

Here, Defendants have violated the law in three ways.

First, they are not registered telemarketers with the State of Vermont (nor are they registered with the Vermont Secretary of State to conduct business in Vermont), in violation of 9 V.S.A. § 2464a(b)(1).

Second, Defendants called people on the Do Not Call Registry and after they were told to stop calling, in violation of 9 V.S.A. § 2464a(b)(2). Strong Aff. ¶¶ 4, 8-9, 14.

Third and last, Defendants obscured their true name and number when making a solicitation, in violation of 9 V.S.A. § 2464a(b)(3). *See* Strong Aff. ¶ 10 (describing a false name and number from "Monica Atkins" and that is why Rep. Strong answered Defendants' phone call).

Thus, the State is likely to prevail on its claim in Count Two of the Complaint, and an injunction should be issued.

C. Request for Relief

Courts have the authority to restrict an otherwise lawful activity accomplished in an unlawful manner in order to eliminate unfair or deceptive practices. *See FTC v. National Lead*, 352 U.S. 419, 510 (1959) (upholding FTC's restriction of lawful activities in order to prevent a continuance of unfair competitive practices).

Here, a preliminary injunction is warranted to restrict Defendants' unfair and illegal acts and practices.

Defendants are harassing and annoying state legislators and pressuring them to sign contracts for dodgy services at ridiculous rates. The Attorney General's Office already attempted to resolve the matter directly with a cease-and-desist letter. Further, it is not so simple for legislators to ignore the phone calls and emails, particularly due to their ongoing public duties, as well as the natural reaction of any person to answer a phone call late at night from unknown numbers in fear of an emergency situation. The State of Idaho has already had to resort to a similar injunction and judgment for Defendants' identical conduct. Facos Ex. 5.

Therefore, an injunction is needed now to enjoin Defendants' oppressive and harmful conduct. The State files a concurrent **Proposed Order** with the suggested injunctive terms.

Conclusion

For the foregoing reasons, the State respectfully requests that the Court issue an order requiring that Defendants refrain from conducting any telemarketing business in Vermont or contacting state legislators or residents for any solicitation offers. ***See* Proposed Order filed concurrently.**

DATED at Montpelier, Vermont, this 25th day of March 2022.

STATE OF VERMONT

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