

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

**STATE OF ARKANSAS ex rel.
DUSTIN McDANIEL, Attorney General**

PLAINTIFF

v.

CASE NO. 4:09cv00485 BSM

GENERAL WARRANTY SERVICES, INC.

DEFENDANT

ORDER

An order granting the State of Arkansas's motion for discovery sanctions and attorneys fees was entered on April 27, 2010 [Doc. No. 19], in which the answer of General Warranty Services ("GWS") was stricken, a default judgment was given to Arkansas on the issue of liability, and Arkansas was awarded \$1350 in attorneys fees. Arkansas now asks for a determination of its damages.

A damages hearing was conducted on June 9, 2010. The testimony established that GWS grossly and maliciously violated a number of federal and state statutes and regulations, including the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6101, *et seq.*; the Telephone Consumer Protection Act, 47 U.S.C. § 227; the Telemarketing Sales Rule, 16 C.F.R. § 310; the Arkansas Consumer Telephone Privacy Act, Ark. Code Ann. §§ 4-99-401, *et seq.*; the Caller Identification Blocking by Telephonic Sellers Act, Ark. Code Ann. §§ 4-99-301 *et seq.*; the Arkansas Deceptive Trade Practices Act, Ark. Code Ann. §§ 4-88-101, *et seq.*; and Ark. Code Ann. § 5-63-204.

One of the witnesses, Stephen Digiovanna, who is an investigator with the Attorney General's Office, testified that GWS committed at least eleven provable "do-not-call" list

violations and five provable violations of statutes prohibiting the sending of pre-recorded messages to cell phones. Digiovanna stated that these are the only provable violations because GWS engaged in “spoofing” in order to avoid detection. Spoofing is when a caller fraudulently causes a fictitious number to appear on the receiving phone’s caller identification so that the person receiving the phone call will not know how to contact the caller. Digiovanna testified that spoofing made it nearly impossible for the government to trace the violator’s phone number.

Digiovanna also testified that GWS employed telemarketer phone banks to place its calls who would provide little, if any, information about GWS to the Arkansas Attorney General’s Office. Finally, GWS refused to provide discovery information to its lawyers so that it could avoid future detection.

Arkansas requests \$138,533.91 in fines, penalties, damages, costs and attorney’s fees for the eleven “do-not-call” list violations and five violations of statutes prohibiting the sending of pre-recorded messages to cell phones. Arkansas’s request is reasonable and is hereby granted.

Accordingly, GWS is hereby ordered to pay fines, penalties, damages, costs and fees to the State of Arkansas in the amount of \$138,533.91, for all of which, let execution issue.

IT IS SO ORDERED this 9th day of June, 2010.


UNITED STATES DISTRICT JUDGE