

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

CHARLES R. CLEMENS,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:21-cv-1002 (RDA/LRV)
)	
CONSUMER SOLUTION CENTER,)	
<i>et al.</i> ,)	
)	
Defendants.)	
_____)	

REPORT & RECOMMENDATION

This matter is before the Court on Plaintiff Charles R. Clemens’s Motion for Default Judgment (Dkt. No. 51) and renewed Motion for Default Judgment (Dkt. No. 60). Plaintiff, proceeding *pro se*, alleges that Defendants marketed their debt reduction services in violation of the Telephone Consumer Protection Act (“TCPA”), Virginia Telephone Privacy Protection Act (“VTPPA”), and Virginia Consumer Protection Act (“VCPA”). Plaintiff moves for default judgment against a subset of the original Defendants—Consumer Solution Center, John Estrada, and Brian Brittain (the “Defaulting Defendants”)—on the TCPA and VTPPA claims. The remaining Defendants have been dismissed, and Plaintiff confirmed during the January 3, 2025 hearing that he is not seeking default judgment under the VCPA. Having reviewed the motions and the entire record in this case, the undersigned recommends granting Plaintiff’s motions in part for the reasons that follow.

I. Factual and Procedural Background

On August 30, 2021, Plaintiff filed a Complaint against Defendants CounselorChen, P.C., Consumer Solution Center, John Estrada, Brian W. Brittain, Global Client Solutions, LLC,

Candice O’Brien, and John/Jane Does 1–5. (Dkt. No. 1 ¶¶ 1–7.) Counts I through X of the Complaint seek relief for alleged violations of the TCPA, Count XI seeks relief for alleged violations of the VTPPA, and Count XII seeks relief for alleged violations of the VCPA. On January 6, 2022, Plaintiff filed an Amended Complaint against the same Defendants. (Dkt. No. 19.) The Amended Complaint includes four counts for alleged violations of the TCPA, one count for alleged violations of the VTPPA, and one count for alleged violations of the VCPA. (*Id.* at 33–36.) Specifically, Counts I through IV seek relief under 47 U.S.C. §§ 227(b)–(c) for negligent and knowing or willful violations of the TCPA’s robocall prohibition and negligent and knowing or willful violations of the TCPA’s Do-Not-Call Policy. (*Id.* at 33–34.) Count V seeks relief under Virginia Code §§ 59.1-510–518 for negligent violations of the VTPPA. (*Id.* at 34–35.) Count VI seeks relief under Virginia Code § 59.1-200(1) for willful violations of the VCPA. (*Id.* at 35–36.) As relief, Plaintiff requests \$500 for each negligent violation of Counts I through VI, \$1,500 for each knowing or willful violation of Counts I through VI, punitive damages, prejudgment interest, reasonable attorneys’ fees and costs, and injunctive relief. (*Id.* at 36–37.)

The following facts are established in the Amended Complaint.¹ Plaintiff is the user of cell phone number (518) 495-9301.² (*Id.* ¶ 27.) The account is in the name of Plaintiff’s wife, Jacqueline Beal. (*Id.*) Plaintiff uses his cell phone for residential purposes. (*Id.* ¶ 28.) Plaintiff’s cell phone number has been on the national Do-Not-Call registry since 2008. (*Id.* ¶ 29.) On August 30, 2019, “Jason” called Plaintiff’s cell phone number and asked to speak with Jacqueline Beal. (*Id.* ¶¶ 30, 32.) Plaintiff answered the call and responded “as though he were ‘Mr. Beal’ when the

¹ See *GlobalSantaFe Corp. v. Globalsantafe.com*, 250 F. Supp. 2d 610, 612 n.3 (E.D. Va. 2003) (“Upon default, facts alleged in the complaint are deemed admitted and the appropriate inquiry is whether the facts as alleged state a claim.” (citing *Anderson v. Found. for Advancement, Educ. & Emp. of Am. Indians*, 187 F.3d 628 (4th Cir. 1999) (unpublished table decision))).

² Plaintiff’s cell phone number is publicly available on the docket.

caller addressed him by this name.” (*Id.* ¶ 33.) “Jason” told Plaintiff that he was with “Credit Solutions.” (*Id.* ¶ 34.) During a brief conversation with “Jason,” Plaintiff “feigned interest” in the debt reduction services being offered by “Jason,” purportedly to obtain evidence “to use against the underlying participators.” (*Id.* ¶ 38.) Plaintiff was transferred to Estrada, who introduced himself as a representative of Consumersolutioncenter.com. (*Id.* ¶ 39.) Estrada informed Plaintiff that he met “some of the basic criteria for interest rate payment reduction” and explained how Consumer Solution Center’s debt reduction program works. (*Id.* ¶¶ 40, 44.) According to Estrada, program participants cease “paying the monthly credit card bill(s) to the creditor” and instead pay into “a FDIC insured dedicated savings/holding account in the participant’s name.” (*Id.* ¶ 44.) “Once account reserves build up . . . to an amount able to settle one of the accounts entered into the program, it is settled after first being approved by the participant at an average settlement of 39%.” (*Id.*) Estrada further informed Plaintiff that the “FDIC insured dedicated savings/holding account” is “set up through CounselorChen’s law firm in association with Global Client Solutions.” (*Id.*) Estrada referenced “our attorneys” throughout the call and told Plaintiff he would need to meet face to face with a representative of CounselorChen “before the program effectuated.” (*Id.* ¶ 46–48.) Following the call, Estrada emailed Plaintiff the contact information for CounselorChen and additional information about Consumer Solution Center. (*Id.* ¶ 49; *see also* Dkt. No. 19-2.)

Estrada called Plaintiff on September 3 and 4, 2019. (*Id.* ¶¶ 50, 56.) During the September 4, 2019 call, “Lucy” scheduled an in-person meeting between Plaintiff and a representative of CounselorChen for September 9, 2019 at 7:00 p.m. at a Starbucks near Plaintiff’s home. (*Id.* ¶ 64.) O’Brien, a purported representative of CounselorChen, called Plaintiff the morning of September 9, 2019 to confirm the meeting. (*Id.* ¶ 65.) Later that day, Plaintiff and his wife met

O'Brien as scheduled. (*Id.* ¶ 68.) During the meeting, O'Brien presented Plaintiff and his wife with a packet of information about Consumer Solution Center's debt production program. (*Id.* ¶ 70.) Plaintiff and his wife asked for additional time to review the information and left the meeting without executing the paperwork. (*Id.*)

On September 10, 2019, Estrada texted Plaintiff and encouraged him to reach out with any questions about the paperwork. (*Id.* ¶ 72.) Around that time, Plaintiff "searched for Consumer Solution Center using the address provided by Estrada and learned that there is not a corporate entity registered with this name in the California." (*Id.* ¶ 75.) When Estrada called again on September 12, 2019, Plaintiff asked Estrada why there was no listing for Consumer Solution Center in the database maintained by the California Secretary of State. (*Id.* ¶ 80.) Estrada "evaded the question" and hung up. (*Id.* ¶¶ 80–81.) Shortly thereafter, Plaintiff received a call from Brittain, who identified himself as "one of the managers" and apologized for the "disconnects" Plaintiff experienced with Estrada. (*Id.* ¶ 83.) When Plaintiff asked Brittain about the listing for Consumer Solution Center, Brittain "evaded the question." (*Id.* ¶ 85.) Plaintiff then asked Brittain for a copy of Consumer Solution Center's Do Not Call Policy, which Brittain refused to provide. (*Id.*) Plaintiff reiterated his request for the policy and "asked Brittain not to call again." (*Id.*) Plaintiff did not receive any additional calls from Brittain. Estrada, however, called Plaintiff on September 23 and 25, 2019. (*Id.* ¶ 86.) In total, Plaintiff received twenty-seven calls and one text message from Defendants between August 30, 2019 and September 25, 2019. (*See* Dkt. No. 19-1.)

As stated above, Plaintiff filed the original Complaint on August 30, 2021. (Dkt. No. 1.) That same day, the clerk's office issued Summonses to Brittain, Consumer Solution Center, CounselorChen, Estrada, Global Client Solutions, O'Brien, and John/Jane Does 1–5. (Dkt. No.

3.) On November 19, 2021, Plaintiff filed affidavits for service of process as to Brittain, Global Client Solutions, Consumer Solution Center, and Estrada with the Secretary of the Commonwealth of Virginia (the “Secretary”). (See Dkt. Nos. 6–9.) On November 22, 2021, the Secretary served Brittain, Global Client Solutions, Consumer Solution Center, and Estrada with the Summons and Complaint via certified mail. (*Id.*) On November 26, 2021, the Summons as to CounselorChen was returned executed; a process server personally served CounselorChen on November 19, 2021. (Dkt. No. 5.) On November 24, 2021, a process server served O’Brien by posting a copy of process at O’Brien’s residence. (Dkt. No. 11.) Plaintiff failed to serve John/Jane Does 1–5, and on March 13, 2024, the Court dismissed the Doe Defendants. (Dkt. No. 43.)

On December 10, 2021, CounselorChen moved to dismiss the Complaint. (Dkt. No. 12.) On January 6, 2022, Plaintiff filed an Amended Complaint against Brittain, Consumer Solution Center, CounselorChen, Estrada, Global Client Solutions, O’Brien, and John/Jane Does 1–5. (Dkt. No. 19.) CounselorChen and Global Client Solutions moved to dismiss the Amended Complaint on January 19 and January 20, 2022, respectively. (Dkt. Nos. 23, 26.) On February 14, 2022, Plaintiff voluntarily dismissed all claims against CounselorChen and Global Client Solutions. (Dkt. No. 32; *see also* Dkt. No. 31.)

On March 9, 2022, Plaintiff requested an entry of default against Consumer Solution Center, Estrada, Brittain, and O’Brien. (Dkt. No. 33.) On October 25, 2022, the clerk’s office entered the default. (Dkt. No. 37.) On October 26, 2022, the Court directed Plaintiff to file a motion for default judgment against the then-remaining Defendants. (Dkt. No. 38.) Plaintiff moved to stay the Court’s order on November 18, 2022, and the Court granted the stay on November 29, 2022, until “the liability of each non-defaulting Defendant, Counselor Chen, P.C. and Global Client Solutions, has been determined.” (Dkt. Nos. 39, 41.) On February 21, 2024,

the Court directed Plaintiff to file a status report updating the Court on “the status of this case and the progress that has been made towards determining the liability of the non-defaulting Defendants.” (Dkt. No. 42.) Plaintiff filed a status report on March 21, 2024, requesting that the Court continue the stay pending Plaintiff’s appeal of the dismissal of a related case in Loudoun County Circuit Court against CounselorChen, P.C. and Global Client Solutions. (Dkt. No. 44.) On March 25, 2024, the Court directed Plaintiff to file another status report on or before September 2, 2024. (Dkt. No. 45.) Plaintiff filed additional status reports on March 27, 2024 and September 3, 2024. (Dkt. Nos. 46, 47.) Additionally, on September 3, 2024, Plaintiff moved to lift the stay because the Virginia Court of Appeals had denied Plaintiff’s appeal. (Dkt. No. 48.) On September 11, 2024, the Court lifted the stay and directed Plaintiff to file a motion for default judgment. (Dkt. No. 49.)

On November 12, 2024, Plaintiff filed a Motion for Default Judgment against Consumer Solution Center, Brittain, Estrada, and O’Brien. (Dkt. No. 51.) The Court held a hearing on Plaintiff’s motion on January 3, 2025. Plaintiff participated in the hearing. No one appeared on behalf of Consumer Solution Center, Brittain, Estrada, or O’Brien. During the hearing, Plaintiff informed the Court that he had entered into a stipulation with O’Brien dismissing all claims against her with prejudice. The stipulation of dismissal was filed on the docket later that day. (Dkt. No. 54.) Following the hearing, the Court took Plaintiff’s default judgment motion under advisement. On April 14, 2025, Plaintiff filed a renewed Motion for Entry of Default Judgment against Consumer Solution Center, Brittain, and Estrada a/k/a “John Esparza.”³ (Dkt. No. 60.) Plaintiff waived a hearing on the renewed default judgment motion. (Dkt. No. 61.)

³ Plaintiff’s original default judgment motion includes at least one reference to “John Esparza.” Plaintiff confirmed during the January 3, 2025 hearing that “John Esparza” is Estrada.

II. Legal Standard

A default may be entered when “a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a). Although a defaulting defendant is deemed to have admitted the well-pleaded allegations of fact set forth in the complaint, *see* Fed. R. Civ. P. 8(b)(6), conclusions of law or “allegations regarding liability that are not ‘well-pleaded’” are not deemed admitted. *Balt. Line Handling Co. v. Brophy*, 771 F. Supp. 2d 531, 540 (D. Md. Feb. 2, 2011) (quoting *Ryan v. Homecomings Fin. Network*, 253 F.3d 778, 780 (4th Cir. 2001)); *see also JTH Tax, Inc. v. Grabert*, 8 F. Supp. 3d 731, 736 (E.D. Va. 2014). Before entering default judgment, therefore, the Court must determine whether the facts, as alleged in the Amended Complaint, state a claim for relief. *JTH Tax, Inc.*, 8 F. Supp. at 736 (citing *Anderson v. Found. for Advancement, Educ. & Emp. of Am. Indians*, 187 F.3d 628 (4th Cir. 1999) (unpublished table decision)). A *pro se* complaint should be liberally construed. *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978). But the Court’s “task is not to discern the unexpressed intent of the plaintiff.” *Laber v. Harvey*, 438 F.3d 404, 413 n.3 (4th Cir. 2006). Nor does the liberal pleading standard “excuse a clear failure in the pleadings to allege a federally cognizable claim.” *Laber v. United States DOD*, No. 3:21-cv-502, 2021 WL 5893293, at *2 (E.D. Va. Dec. 13, 2021) (citing *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990)).

The Court must also find that there is subject matter jurisdiction, personal jurisdiction over the defaulting defendants, and that venue and service of process are proper. *See Am. Auto. Assoc. v. AAA Auto Glass, LLC*, No. 1:14CV1072, 2015 WL 3545927, at *1–2 (E.D. Va. June 3, 2015).

III. Proposed Findings

A. Jurisdiction and Venue

Upon review, the undersigned finds that this Court has subject matter jurisdiction over

Plaintiff's TCPA claims because the TCPA is a federal statute. *See* 28 U.S.C. §§ 1331, 1338(a). The undersigned further finds that the Court has supplemental jurisdiction over Plaintiff's related VTPPA claims because those claims arise out of the same facts and circumstances as the TCPA claims. *See* 28 U.S.C. § 1367. Additionally, the undersigned finds that this Court has personal jurisdiction over the Defaulting Defendants under Federal Rule of Civil Procedure 4(k)(1)(A) and Virginia Code § 8.01-328.1(A)(1). *See Dores v. One Main Fin.*, No. 1:15-CV-01609-LO-MSN, 2016 WL 3511744, at *1 (E.D. Va. June 1, 2016), *report and recommendation adopted*, No. 1:15-CV-1609-LO-MSN, 2016 WL 3538370 (E.D. Va. June 21, 2016); *Richardson v. William Sneider & Assocs., LLC*, No. 4:12CV25, 2012 WL 3525625, at *3 (E.D. Va. July 24, 2012), *report and recommendation adopted*, No. 4:12CV25, 2012 WL 3525621 (E.D. Va. Aug. 14, 2012). As to venue, the undersigned finds that venue is proper in this district because Plaintiff resides in this district and received the communications giving rise to his causes of action in this district. *See* 28 U.S.C. § 1391(b)(2).

B. Service of Process

Federal Rule of Civil Procedure 4(e)(1) provides that “an individual . . . may be served in a judicial district of the United States by . . . following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located.” Fed. R. Civ. P. 4(e)(1). A corporation may be sued “in the manner prescribed by Rule 4(e)(1) for serving an individual.” Fed. R. Civ. P. 4(h)(1)(A). Under Virginia law, when service is to be made on the Secretary of the Commonwealth of Virginia, the party seeking service “shall file an affidavit with the court, stating . . . that the person to be served is a nonresident.” Va. Code § 8.01-329(B). The Secretary sends “by certified mail, return receipt requested, to the person . . . to be served at the last known post-office address of such person notice of such service, a copy of the process or

notice, and a copy of the affidavit.” *Id.* § 8.01-329(C). The Secretary must then file a certificate of compliance, which the clerk of court mails to the “person who filed the affidavit.” *Id.*

On November 19, 2021, Plaintiff filed affidavits for service of process as to the Defaulting Defendants with the Office of the Secretary of the Commonwealth of Virginia. (*See* Dkt. Nos. 6, 8, 9.) On November 22, 2021, the Secretary served the Defaulting Defendants with the Summons and Complaint via certified mail. (*Id.*) The service of process was ultimately returned “undeliverable, not known, unable to forward” as to the Defaulting Defendants. (Dkt. No. 52 ¶ 4.) The undersigned nevertheless finds that service of process was properly effectuated on the Defaulting Defendants because Plaintiff complied with the statutory provisions of Virginia Code § 8.01-329(C). *See Equip. Fin. Grp., Inc. v. Traverse Computer Brokers*, 973 F.2d 345, 347 (4th Cir. 1992) (“The plaintiff complied with the statutory provisions and the sufficiency of process was not affected by the failed delivery of notice from the Secretary to the putative defendant, Synchronized.”)

C. Grounds for Entry of Default

Federal Rule of Civil Procedure 55 requires entry of a default when “a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Fed. R. Civ. P. 55(a). The Defaulting Defendants have not appeared, answered, or otherwise filed any responsive pleadings in this case. Accordingly, on October 25, 2022, the clerk’s office properly entered default as to the Defaulting Defendants. (Dkt. No. 37.)

D. **Liability**

1. TCPA Claims

a) *Section 227(b) Claims*

In Counts I and II, Plaintiff seeks relief for alleged “negligent” and “knowing and/or willful” violations of the TCPA’s robocall prohibition, 47 U.S.C. § 227(b), by unspecified Defendants. (Dkt. No. 19 ¶¶ 189–91.) Section 227(b) of the TCPA makes it “unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice . . . to any . . . cellular telephone service” 47 U.S.C. § 227(b)(1)(A)(iii).

Plaintiff does not allege use of an artificial or prerecorded voice in any of the calls at issue. To state a claim under section 227(b) “when, as here, a plaintiff does not allege use of an artificial or prerecorded voice, a plaintiff must allege: (1) that the defendant called the plaintiff’s cellular telephone; (2) using an automatic dialing system; (3) without the plaintiff’s prior express consent.” *Nickson v. Advanced Mktg. & Processing, Inc.*, No. CV DLB-22-2203, 2023 WL 4932879, at *3 (D. Md. Aug. 2, 2023) (quotation marks and citation omitted). The TCPA defines an automatic telephone dialing system (“ATDS”) as equipment which has the capacity “to store or produce telephone numbers to be called, using a random or sequential number generator,” and “to dial such numbers.” 47 U.S.C. § 227(a)(1). The automatic dialing capability alone is not enough to qualify a system as an ATDS. *See Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1168–69 (2021) (reversing the Ninth Circuit’s judgment that “held that Duguid had a claim under the TCPA by alleging that Facebook’s notification system automatically dialed stored numbers”). Rather, the system at issue must store numbers using a random or sequential number generator or produce numbers using a

random or sequential number generator to qualify as an ATDS. *See id.* at 1169 (“Because Facebook’s notification system neither stores nor produces numbers using a random or sequential number generator, it is not an autodialer.”) (internal quotation marks and citation omitted).

Plaintiff offers the following allegations in support of Defendants’ ATDS use: “Defendants made some of the calls using an automatic telephone dialing system (ATDS) that was engineered to display spoof telephone numbers” (Dkt. No. 19 ¶ 11); when Plaintiff answered the call from “Jason” on August 30, 2019, “there was a noticeable pause on the line indicating the call was made by an ATDS” (*id.* ¶ 31); “Plaintiff googled the PA number and other numbers which Mr. Estrada used and determined they were spoof numbers, indicative of the calls coming from an ATDS” (*id.* ¶ 55); and “Plaintiff believes Defendant, or someone on his behalf, called him with an automatic telephone dialing system” because “Defendant’s calls to Plaintiff began with a noticeable pause prior to a live representative of Defendant coming on the line” (*id.* ¶ 144). These allegations do not plead facts sufficient to find that one or more of the Defaulting Defendants made calls using an ADTS. *See Aaronson v. CHW Grp., Inc.*, No. 1:18-CV-1533, 2019 WL 8953349, at *4 (E.D. Va. Apr. 15, 2019) (“[C]ourts have routinely held that a plaintiff cannot support a belief that an ATDS was being used by alleging only that plaintiff experienced ‘dead air’ during the calls at issue.”) (citing *Norman v. AllianceOne Receivables Mgmt., Inc.*, 637 F. App’x 214, 215 (7th Cir. 2015) (finding that “dead air” was insufficient to create an issue of material fact even though auto dialers frequently result in “dead air”); *see also Martin v. Allied Interstate, LLC*, 192 F. Supp. 3d 1296, 1308 (S.D. Fla. 2016); *Estrella v. Ltd. Fin. Servs., LP*, No. 14-cv-2624, 2015 WL 6742062, at *3 (M.D. Fla. Nov. 2, 2015)). Indeed, allegations elsewhere in Plaintiff’s Amended Complaint “negate, rather than support,” an inference that an ATDS was used for at least two reasons. *Nickson*, 2023 WL 4932879, at *5.

First, Plaintiff’s allegations suggest that the calls at issue were targeted to Plaintiff’s wife or Plaintiff, and thus were not made using an ATDS. When Plaintiff answered the August 30, 2019 call, “Jason” asked for Jacqueline Beal, Plaintiff’s wife and the registered owner of the account associated with Plaintiff’s cell phone number.⁴ (Dkt. No. 19 ¶¶ 27, 32; *see also* ¶ 41 (“The initial caller was possibly asking for Mrs. Beal as a result of the line being in Ms. Beal’s name with Verizon and previously with Comcast.”)) The undersigned finds it implausible that “Jason” made the call to Plaintiff’s cell phone number using a device that stores a telephone number using a random or sequential generator or produces a telephone number using a random or sequential number generator. *Cf. Facebook*, 141 S. Ct. at 1168–71 (“targeted, individualized” communications “to numbers linked to specific accounts” do not state an ATDS claim under the TCPA). Rather, the August 30, 2019 call was targeted to Plaintiff or his wife, as the account holder. As to the subsequent calls from Estrada and Brittain, the undersigned finds that they were clearly targeted to Plaintiff because Plaintiff “feigned interest” in the debt reduction services offered by “Jason” during the August 30, 2019 call. (Dkt. No. 19 ¶ 38.)

Second, Plaintiff’s allegations establish that Plaintiff spoke with live representatives during the calls at issue. For example, Plaintiff alleges that he spoke with “Jason” when he answered the August 30, 2019 call, and that “Jason” transferred him to Estrada. (*Id.* ¶¶ 38–39.) Speaking with a live person generally undercuts allegations of ATDS use. *See Nickson*, 2023 WL 4932879, at *5–6 (finding allegations that plaintiff, among other things, “first heard a beeping sound and short pause” before speaking with a live representative did not sufficiently allege that defendant called

⁴ As alleged in the Amended Complaint, “Jason” initiated the August 30, 2019 call on behalf of “Credit Solutions.” (Dkt. No. 19 ¶¶ 30, 34.) “Jason” is not one of the Defaulting Defendants. The undersigned nevertheless finds it necessary to address the August 30, 2019 call to the extent Plaintiff’s Amended Complaint can be construed to allege that “Jason” was acting on behalf of Defendant Consumer Solution Center.

plaintiff using at ATDS); *see also Duran v. Wells Fargo Bank, N.A.*, 878 F. Supp. 2d 1312, 1316 (S.D. Fla. 2012) (granting motion to dismiss because the allegation that the plaintiff “spoke with Defendant’s representatives . . . negates a claim that the calls were made by an automated dialing system” and the plaintiff did not allege additional facts). The undersigned thus finds that Plaintiff has not plausibly alleged that the Defaulting Defendants utilized an ATDS. Having found that Plaintiff fails to satisfy the second element of his section 227(b) claims, the undersigned does not address the first or third elements.

b) *Section 227(c) Claims*

In Counts III and IV, Plaintiff seeks relief for alleged “negligent” and “knowing and/or willful” violations of the TCPA’s “Do-Not-Call Policy Requirement,” 47 U.S.C. § 227(c), by unspecified Defendants.⁵ (Dkt. No. 19 ¶¶ 192–94.) Section 227(c) of the TCPA creates a private right of action for individuals who “received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of” the TCPA’s Do-Not-Call registry regulations. 47 U.S.C. § 227(c)(5). Those regulations, in turn, provide that “no person or entity shall initiate any telephone solicitation to . . . [a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry”⁶ 47 C.F.R. §

⁵ In the memorandum in support of Plaintiff’s motion for default judgment, Plaintiff seeks \$1,500.00 in damages for Defendant Brittain’s alleged violation of 47 C.F.R. § 64.1200(d). Specifically, Plaintiff alleges that Defendant Brittain “knowingly and willfully failed to send Plaintiff a copy of the do not call policy when requested to.” (Dkt. No. 51 at 17.) Plaintiff’s request for relief under 47 C.F.R. § 64.1200(d) is not pled in the Amended Complaint, and the undersigned declines to address the request here.

⁶ “The Fourth Circuit has not addressed whether cell phone owners are considered ‘residential telephone subscribers,’” and “[c]ourts that have addressed the issue are split as to whether the TCPA extends to wireless telephone numbers.” *Gaker v. Q3M Ins. Sols.*, No. 3:22-cv-00296-RJC-DSC, 2023 WL 2472649, at *2 (W.D.N.C. Feb. 8, 2023) (finding the current language of the TCPA does not include cell phones); *but see Boger v. Citrix Sys., Inc.*, No. PX-19-1234, 2020 WL 1033566, at *4 (D. Md. Mar. 3, 2020) (declining to rule at motion to dismiss stage whether plaintiff’s cell phone functioned as a residential number for TCPA purposes); *Boardman v. Green*

64.1200(c)(2). To state a claim under section 227(c), Plaintiff must establish “that his phone number was on the national do-not-call registry and that [the Defaulting Defendants] made more than one telephone solicitation to him in a year.” *Nickson*, 2023 WL 4932879, at *6. The TCPA defines a “telephone solicitation” as

[t]he initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message (A) to any person with that person’s prior express invitation or permission, (B) to any person with whom the caller has an established business relationship, or (C) by a tax-exempt nonprofit organization.

47 U.S.C. § 227(a)(4).

Plaintiff alleges that his cell phone number has been registered on the national Do-Not-Call registry since 2008. (Dkt. No. 19 ¶ 29.) Plaintiff further alleges that he received multiple calls from Defendants between August 30, 2019 and September 25, 2019. (See Dkt. No. 19-1 (listing the twenty-seven calls and one text message for which Plaintiff seeks relief under the TCPA and VTPPA).) Plaintiff’s section 227(c) claims thus turn on whether two or more of the calls from the Defaulting Defendants were “telephone solicitations.” The TCPA expressly excludes from its definition of “telephone solicitation” a call or message “to any person with whom the caller has an established business relationship.” 47 U.S.C. § 227(a)(4). An “established business relationship” is “a prior or existing relationship formed by a voluntary two-way communication . . . on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the

Dot Corp., No. 3:21-cv-174-FDW-DSC, 2021 WL 3699856, at *3 (W.D.N.C. Aug. 19, 2021) (finding “a cellphone may plausibly be alleged as residential for purposes of the TCPA”). The undersigned agrees with the courts in *Boger v. Citrix Sys., Inc.* and *Boardman v. Green* that a cell phone may plausibly be alleged as residential for purposes of the TCPA. Stated differently, the undersigned does not find that Plaintiff fails to state a claim under section 227(c) of the TCPA because a cell phone is not “residential” for purposes of the TCPA.

call, which relationship has not been previously terminated by either party.” 47 C.F.R. § 64.1200(f)(5). Accordingly, the undersigned first addresses whether Plaintiff entered into an established business relationship with any of the Defaulting Defendants between August 30, 2019 and September 25, 2019.⁷

As alleged, “Jason” called Plaintiff at or around 3:02 p.m. on August 30, 2019. (Dkt. No. 19 ¶ 30.) “Jason” represented that he “was with ‘Credit Solutions’” and worked “from a script about how one could eliminate credit card debt and interest.” (*Id.* ¶ 34.) As of August 30, 2019, Plaintiff and his wife had never heard of Credit Solutions. (*Id.* ¶ 42.) Based on these allegations, the undersigned finds that the August 30, 2019 call was a telephone solicitation by “Jason” on behalf of Credit Solutions, and that Plaintiff had not entered into an established business relationship with “Jason” or Credit Solutions prior to the August 30, 2019 call. *See Nickson*, 2023 WL 4932879, at *7 (finding allegations that call regarding plaintiff’s “recent insurance” and “to save some money on your next breakdown” qualified as a telephone solicitation under the TCPA); *Worsham v. Travel Options, Inc.*, No. JKB-14-2749, 2016 WL 4592373, at *6 (D. Md. Sept. 2, 2016), *aff’d*, 678 F. App’x 165 (4th Cir. 2017) (finding allegations that defendant offered a travel package that would save plaintiff money sufficed to support section 227(c) solicitation claim). Neither “Jason” nor Credit Solutions is a Defaulting Defendant. Moreover, Plaintiff does not allege that Credit Solutions and Consumer Solution Center are the same company, or that “Jason” was calling on behalf of Consumer Solution Center or any of the other Defaulting Defendants.

⁷ To the extent the presence of an established business relationship is construed as an affirmative defense to Plaintiff’s claims, the undersigned finds that “this is one of ‘the relatively rare circumstances where facts sufficient to rule on an affirmative defense are alleged in the complaint.’” *Thomas-Lawson v. Koons Ford of Baltimore, Inc.*, No. CV SAG-19-3031, 2020 WL 1675990, at *5 (D. Md. Apr. 6, 2020) (quoting *Goodman v. Praxair, Inc.*, 494 F.3d 458, 464 (4th Cir. 2007) (en banc)).

Thus, the undersigned finds that the August 30, 2019 telephone solicitation is not actionable against any of the Defaulting Defendants.

During the August 30, 2019 call, Plaintiff “feigned interest in the service” offered by “Jason” to “fully identify and obtain documentary evidence to use against underlying participators.” (Dkt. No. 19 ¶ 38.) After Plaintiff “feigned interest,” “Jason” transferred Plaintiff to Estrada because Plaintiff met “some of the basic criteria for interest rate payment reduction.” (*Id.* ¶¶ 38–39.) “Jason” described Estrada as a “Senior Debt Specialist,” and Estrada told Plaintiff “his company was Consumersolutioncenter.com.” (*Id.*) Estrada explained the debt reduction services offered by Consumer Solution Center, including the involvement of CounselorChen, P.C., a Virginia law firm, and Plaintiff continued to express interest in the services. During or shortly after the call, at 3:28 p.m. on August 30, 2019, Estrada sent Plaintiff an email with additional information about Consumer Solution Center and a link to CounselorChen’s website.⁸ (*Id.* ¶ 49; *see also* Dkt. No. 19-2.) Based on these allegations, the undersigned finds that Plaintiff engaged in “a voluntary two-way communication” with Estrada on August 30, 2019. 47 C.F.R. § 64.1200(f)(5). The undersigned further finds that Plaintiff “inquir[ed] . . . regarding [Consumer Solution Center’s] products or services,” *id.*, and thus entered into an established business relationship with Consumer Solution Center during the August 30, 2019 call.⁹ *See Charvat v.*

⁸ The Amended Complaint does not address how Defendant Estrada obtained Plaintiff’s email address. One possibility is that Plaintiff provided Defendant Estrada with his email address during the August 30, 2019 call.

⁹ Plaintiff’s allegations regarding subsequent calls from Defendants further support the finding that Plaintiff entered into an established business relationship with Defendant Consumer Solution Center. For example, on September 4, 2019, Defendant Estrada informed Plaintiff that his application to participate in the debt reduction program had been “preapprove[d],” and “Lucy” scheduled a face-to-face meeting between Plaintiff and a representative of CounselorChen. (Dkt. No. 19 ¶¶ 59, 63.) Ultimately, both Plaintiff and his wife attended the September 9, 2019 meeting with Candice O’Brien, the purported representative of CounselorChen. (*Id.* ¶¶ 68–69.)

Southard Corp., No. 2:18-CV-190, 2019 WL 13128407, at *5 (S.D. Ohio Sept. 30, 2019) (“Plaintiff moved from inquiries geared towards discovering [defendant’s] identity to a seemingly legitimate question about what was being marketed. This was sufficient to create an EBR on the fifth call.”); *Hamilton v. Spurling*, No. 3:11CV00102, 2013 WL 1164336, at *10 (S.D. Ohio Mar. 20, 2013) (“Setting up the appointment constitutes an ‘inquiry’ or ‘application’ regarding chiropractic services offered at Chiropractic Therapy West. Thereafter, . . . [the plaintiff’s] second, third, and fourth calls following up regarding the missed appointment do not meet the definition of a ‘telephone solicitation’ under the TCPA Regulations.”); *Morris v. Copart*, No. 4:15-CV-724, 2016 WL 6608874, at *9 (E.D. Tex. Nov. 9, 2016) (stating that “the [p]laintiff’s false affirmation that he had a vehicle to donate established a business relationship, excusing subsequent calls made in furtherance of that business relationship and for the stated purpose of that relationship—to effectuate [the p]laintiff’s donation of a car.”). Accordingly, any calls placed during the course of the established business relationship between Plaintiff and Consumer Solution Center were not telephone solicitations within the meaning of the TCPA.

The undersigned next considers whether Plaintiff terminated the established business relationship with Consumer Solution Center. An “established business relationship” can be “terminated by either party.” 47 C.F.R. § 64.1200(f)(5). The TCPA’s implementing regulations provide that a “seller-specific do-not-call request . . . terminates an established business relationship for purposes of telemarketing and telephone solicitation even if the subscriber continues to do business with the seller.” *Id.* § 64.1200(f)(5)(i). Here, Plaintiff alleges that he “asked Brittain not to call again” on September 12, 2019. (Dkt. No. 19 ¶ 85.) Plaintiff plausibly alleges that Brittain, like Estrada, was a representative of Consumer Solution Center. (*See id.* ¶¶

83–85.) The undersigned finds that Plaintiff’s do-not-call request on September 12, 2019 terminated Plaintiff’s established business relationship with Consumer Solution Center.

Having found that Plaintiff terminated the established business relationship with Consumer Solution Center on September 12, 2019, the undersigned next considers whether calls made after September 12, 2019 violated section 227(c) of the TCPA. The TCPA’s implementing regulations state that if a person or entity making any call for telemarketing purposes “receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber’s name, if provided, and telephone number on the do-not-call list at the time the request is made.” 47 C.F.R. § 64.1200(d)(3). Such do-not-call requests must be honored “within a reasonable time from the date such request is made.” *Id.* The “reasonable time” may not exceed 30 days from the date of the request. *Id.*

Here, Plaintiff received two calls from Estrada on September 23 and 25, 2019. (Dkt. No. 19 ¶ 86.) Plaintiff does not allege that he received any calls from Defendants after September 25, 2019. While any telephone solicitations made more than 30 days after a do-not-call request are clearly unreasonable under the TCPA’s current regulations, neither the Fourth Circuit nor this Court has addressed whether calls made within a period of less than 30 days are *per se* reasonable. In *Boger v. Citrix Systems, Inc.*, however, the U.S. District Court for the District of Maryland concluded that section 64.1200(d)(3) does not “create a safe harbor for follow up calls placed within thirty days after the first call.” No. 8:19-CV-01234-PX, 2020 WL 1033566, at *5 (D. Md. Mar. 3, 2020). There, Citrix argued that Boger’s do-not-call claim should be dismissed because the complaint did not allege that Bolger had received a call more than thirty days after being asked to be placed on Citrix’s do-not-call list. *Id.* The court rejected Citrix’s argument, explaining that even if Bolger “had first requested placement on the Do-Not-Call list on May 3, 2016, and Citrix

waited until May 25, 2016 to honor the request, the count still survives dismissal” because whether “Citrix put Bolger on the Do-Not-Call list within a reasonable time is a question of fact best left for development in discovery.” *Id.* (internal quotation marks and citation omitted); *see also, e.g., Menin v. Star Markets Co., Inc.*, No. 23-CV-11918-DJC, 2024 WL 4123522, at *5 (D. Mass. Sept. 9, 2024) (“What constitutes a reasonable time is a question of fact because the regulation does not state that any shorter delay is per se reasonable.”) (internal quotation marks and citation omitted). The court’s reasoning in *Bolger* is persuasive. Viewed in the light most favorable to Plaintiff, the undersigned finds that the Amended Complaint plausibly alleges that Estrada violated section 227(c) of the TCPA when he made calls to Plaintiff on September 23 and 25, 2019.

The undersigned further finds that the Amended Complaint plausibly alleges that Estrada acted as a representative of Consumer Solution Center. Specifically, the Amended Complaint alleges that Estrada “stated his company was Consumersolutioncenter.com,” marketed Consumer Solution Center’s debt reduction services during the calls with Plaintiff, and emailed Plaintiff from johne@consumersolutioncenter.com. (*See* Dkt. No. 19 ¶¶ 39–49; Dkt. No. 19-2); *see also Aaronson v. CHW Grp., Inc.*, No. 1:18-CV-1533, 2019 WL 8953349, at *3 (E.D. Va. Apr. 15, 2019) (finding that the plaintiff failed to establish vicarious liability under the TCPA because the Complaint “fail[ed] to allege any facts that reflect how the caller identified itself (*e.g.*, as defendant’s employee), [or] the substance of the call (*e.g.*, a statement by the caller that he or she was marketing defendant’s goods or services)”). Accordingly, the undersigned finds that Estrada and Consumer Solution Center are jointly and severally liable for the section 227(c) violations. *See Krakauer v. Dish Network, LLC*, 925 F.3d 643, 659 (4th Cir. 2019) (“By its plain language, the TCPA’s private right of action contemplates that a company can be held liable for calls made on its behalf, even if not placed by the company directly.”) (citation omitted).

2. VTPPA Claims

In Count V, Plaintiff seeks relief under Virginia Code §§ 59.1-510–518 for alleged negligent violations of the VTPPA. (Dkt. No. 19 ¶¶ 195–202.) Specifically, Plaintiff alleges that the Doe Defendants and Estrada (1) “repeatedly made telephone solicitation calls to Plaintiff” in violation of Virginia Code §§ 59.1-514(A) and (B); (2) “made some of the calls using spoof numbers” in violation of Virginia Code § 59.1-513; and (3) “did not identify [himself] initially,” in violation of Virginia Code § 59.1-512. (*Id.* ¶¶ 198, 199, 201.) Plaintiff further alleges that Consumer Solution Center, Brittain, and Estrada are “sellers” as defined in Virginia Code § 59.1-514.1, and are “liable for the calls.” (*Id.* ¶ 202.) The undersigned addresses Plaintiff’s requests for relief under sections 59.1-514, 59.1-513, and 59.1-512 in turn.

a) *Section 59.1-514 Claims*

Plaintiff alleges that “Defendant(s) Doe and Defendant Estrada repeatedly made telephone solicitation calls to Plaintiff” in violation of Virginia Code §§ 59.1-514(A) and (B). (Dkt. No. 19 ¶ 198.) Plaintiff further alleges that CounselorChen, Global Client Solutions, Consumer Solution Center, Brittain, Estrada, and O’Brien are “sellers” as defined in Virginia Code § 59.1-514.1, and are “liable for the calls.” (*Id.* ¶ 202.) Section 59.1-514(A) states, in relevant part, that “[n]o telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number when a person at such telephone number previously has stated that he does not wish to receive a telephone solicitation call made by or on behalf of the person on whose behalf the telephone solicitation call is being made” Va. Code 59.1-514(A). Section 59.1-514(B) states that “[n]o telephone solicitor shall initiate, or cause to be initiated, a telephone solicitation call to a telephone number on the National Do Not Call Registry” *Id.* § 59.1-514(B). The VTPPA defines a “telephone solicitor” as “any person who makes or initiates, or causes another person to

make or initiate, a telephone solicitation call.” *Id.* § 59.1-510. The VTPPA defines a “telephone solicitation call” as

[A]ny telephone call made or initiated to any natural person’s residence in the Commonwealth, to any landline or wireless telephone with a Virginia area code, or to a landline or wireless telephone registered to any natural person who is a resident of the Commonwealth or any text message sent to any wireless telephone with a Virginia area code or to a wireless telephone registered to any natural person who is a resident of the Commonwealth, for the purpose of offering or advertising any property, goods, or services for sale, lease, license, or investment, including offering or advertising an extension of credit or for the purpose of fraudulent activity, including engaging in any conduct that results in the display of false or misleading caller identification information on the called person’s telephone.

Id. For purposes of section 59.1-514, a telephone solicitation call “shall not include a telephone call made to any person . . . with whom the person on whose behalf the telephone call is made has an established business relationship.” *Id.* § 59.514(D). The VTPPA defines an established business relationship as

[A] relationship between the called person and the person on whose behalf the telephone solicitation call is being made or initiated based on . . . the called person’s inquiry or application regarding any property, good, or service offered by the person on whose behalf the telephone solicitation call is being made or initiated within the three months immediately preceding the date of the call.

Id. § 59.1-510.

For the reasons explained above, the undersigned finds that the August 30, 2019 call, which was initiated after Plaintiff registered his cell phone number on the national Do-Not-Call registry and before he entered into an established business relationship, was a telephone solicitation as defined under the VTPPA. However, none of the Defaulting Defendants made the August 30, 2019 solicitation call. Rather, the call was made by “Jason,”¹⁰ a purported representative of Credit

¹⁰ It is not clear from the face of the Amended Complaint whether “Jason” is one of the John/Jane Doe Defendants. Assuming “Jason” is one of the John/Jane Doe Defendants does not save Plaintiff’s section 59.1-514(B) claim because the John/Jane Doe Defendants were dismissed from this action. (*See* Dkt. No. 43.)

Solutions. (Dkt. No. 19 ¶¶ 30, 34.) Plaintiff does not allege that Credit Solutions and Consumer Solution Center are the same company. Indeed, the allegations in the Amended Complaint suggest Plaintiff viewed Credit Solutions and Consumer Solutions Center as two distinct entities. (*See id.* ¶ 39 (“[Consumersolutioncenter.com] differs from the one provided by Jason and further solidified the Plaintiff’s suspicions.”).) Moreover, Plaintiff does not allege that “Jason” was calling on behalf of Consumer Solution Center or any of the other Defaulting Defendants or, relatedly, that any of the Defaulting Defendants “cause[d]” the August 30, 2019 telephone solicitation “to be initiated.” Va. Code § 59.1-514(B). Accordingly, the August 30, 2019 telephone solicitation is not actionable against any of the Defaulting Defendants. As to the calls and text message initiated before September 12, 2019, these communications were not telephone solicitations because they were initiated during the course of Plaintiff’s established business relationship with Consumer Solution Center.

The undersigned next considers whether calls made after September 12, 2019 violated section 59.1-514 of the VTPPA. As stated above, Plaintiff alleges that he asked Brittain “not to call again” on September 12, 2019, and that “[a]fter having informed Consumer Solution Center to not call Plaintiff again, they continued to call” on September 23 and 25, 2019. (Dkt. No. 19 ¶¶ 85, 86.) Plaintiff further alleges that Estrada made the September 23 and 25, 2019 calls to Plaintiff. (*See id.* ¶ 86 (“Plaintiff has screen shots of call attempts/missed calls from both of Mr. Estrada’s telephone numbers.”); *see also* Dkt. No. 19-2.) These facts are sufficient to support a finding that Plaintiff terminated the established business relationship with Consumer Solution Center on September 12, 2019. *See* Va. Code § 59.1-514(B) (“The exemption for an established business relationship . . . shall not apply when the person called previously has stated that he does not wish to receive telephone solicitation calls as provided in subsection A.”). These facts further support

a finding that Estrada and, by extension, Consumer Solution Center did not honor Plaintiff's September 12, 2019 do-not-call request.¹¹ *See id.* § 59.1-514(A) (“Any such request not to receive telephone solicitation calls shall be honored for at least 10 years from the time the request is made.”). And separately, Plaintiff has alleged facts sufficient to support a finding that Estrada acted on behalf of Consumer Solution Center. (*See* Dkt. No. 19 ¶¶ 39–49; Dkt. No. 19-2.) Under the VTPPA, “[a] telephone solicitation call offering or advertising a seller’s property, goods, or services shall be presumed to have been made or initiated on behalf of or for the benefit of the seller” Va. Code § 59.1-514.1(B). The undersigned finds that the September 23 and 25, 2019 calls violated section 59.1-514 of the VTPPA, and further, that Estrada and Consumer Solution Center are jointly and severally liable for the violations. *See id.* § 59.1-514.1(A) (“A seller on whose behalf or for whose benefit a telephone solicitor makes or initiates a telephone solicitation call in violation of any provision of § . . . 59.1-514 and the telephone solicitor making or initiating the telephone call shall be jointly and severally liable for such violation.”).

b) *Section 59.1-513 Claims*

Plaintiff alleges that “Defendant Doe and Defendant Estrada” made “calls using spoof numbers” in violation of Virginia Code § 59.1-513. (Dkt. No. 19 ¶ 199.) Section 59.1-513(A) requires a telephone solicitor to “transmit the telephone number, and, when, available by the telephone solicitor’s carrier, the name of the telephone solicitor,” whereas section 59.1-513(B) prohibits any “intentional action to prevent the transmission of the telephone solicitor’s name or telephone number to any person receiving a telephone solicitation call or engage in any conduct that results in the display of false or misleading caller identification information on the called

¹¹ Unlike the TCPA, the VTPPA does not provide telephone solicitors with a 30-day grace period to comply with do-not-call requests.

person’s telephone.” Va. Code §§ 59.1-513(A)–(B). Section 59.1-513(C) provides that the name and telephone number of the person making a telephone solicitation call may be substituted with the name of the entity on whose behalf the call is made and the customer service telephone number for the entity. *Id.* § 59.1-513(C).

In support of his section 59.1-513 claims, Plaintiff alleges the following: “Defendants made some of the calls using an automatic telephone dialing system (ATDS) that was engineered to display spoof telephone numbers” (Dkt. No. 19 ¶ 11); “Defendant’s callers failed to fully identify him/herself and failed to provide a working telephone number whereby the Plaintiff could utilize in an attempt to have his number removed from the caller(s) marketing list and hence still remain unidentified to this date” (*id.*); and “Plaintiff googled the PA number and other numbers which Mr. Estrada used and determined they were spoof numbers” (*id.* ¶ 55). These conclusory allegations fail to state a claim under section 59.1-513. As stated above, the Doe Defendants were dismissed from this action. (*See* Dkt. No. 43.) And the telephone numbers for Estrada were transmitted to Plaintiff and are identified in the Amended Complaint. (*See* Dkt. No. 19-1.) Additionally, the Amended Complaint does not include any facts that establish Estrada’s numbers were “false or misleading,” such that Plaintiff could not “make a request not to receive telephone solicitation calls,” nor does it include any facts that suggest Plaintiff attempted to make such a request. *See* Va. Code § 59.1-513(A). The undersigned finds that Plaintiff fails to state a claim against Estrada under section 59.1-513.

c) *Section 59.1-512 Claims*

Plaintiff alleges that the “Defendant Doe(s) did not, initially, identify themselves or the person or company on whose behalf they were calling,” and separately, that “Defendant Doe and defendant Estrada did not identify himself themselves [sic] initially.” (Dkt. No. 19 ¶¶ 200–01.)

Section 59.1-512 states that “[a] telephone solicitor who makes a telephone solicitation call shall identify himself by his first and last names and the name of the person on whose behalf the telephone solicitation call is being made promptly upon making contact with the called person.” Va. Code § 59.1-512. As stated above, the Doe Defendants were dismissed from this action. (*See* Dkt. No. 43.) And, based on the facts alleged, it appears Estrada complied with section 59.1-512. During the August 30, 2019 call, Estrada “came on the line and introduced himself as John Estrada and stated his company was Consumersolutioncenter.com.” (Dkt. No. 19 ¶ 20.) The undersigned finds that Plaintiff fails to state a claim against Estrada under section 59.1-512.

E. Requests for Relief

1. Damages

Plaintiff seeks damages under both the TCPA and the VTPPA. For the reasons explained above, the undersigned finds that the September 23 and 25, 2019 calls made by Estrada violated both the TCPA and the VTPPA, and that Estrada and Consumer Solution Center are jointly and severally liable under the TCPA and VTPPA. Because penalties under the TCPA and VTPPA are not exclusive and the statutes separately penalize different violative conduct, damages under the VTPPA may be awarded in addition to those under the TCPA for communications that violate both statutes. *See Mey v. Phillips*, 71 F.4th 203, 225 (4th Cir. 2023) (“[T]he district court did not err by awarding one penalty per call under the WVCCPA and under separate sections of the TCPA.”); *see also* Va. Code § 59.1-518 (“Nothing in this chapter shall be construed to limit any remedies, causes of action or penalties available to any person or governmental agency under any other federal or state law.”).

The TCPA provides for statutory damages in the amount of \$500 per violation of section 227(c). 47 U.S.C. § 227(c)(5). “Courts have held that each call made in contravention of the

TCPA constitutes an independent violation entitling the plaintiff to statutory damages.” *Dores v. One Main Fin.*, No. 1:15-CV-01609-LO-MSN, 2016 WL 3511744, at *2 (E.D. Va. June 1, 2016), *report and recommendation adopted*, No. 1:15-CV-1609-LO-MSN, 2016 WL 3538370 (E.D. Va. June 21, 2016) (citing *Charvat v. GVN Michigan, Inc.*, 561 F.3d 623, 631 (6th Cir. 2009); *see also Yount v. Midland Funding, LLC*, No. 2:14-cv-108, 2016 WL 554851, at *8 (E.D. Tenn. Feb. 10, 2016)). Here, Plaintiff has plausibly alleged two violations of section 227(c). The undersigned finds that Plaintiff is entitled to recover damages in the amount of \$500 for each violation, for a total of \$1,000. *See Slate v. Healthy Spirit, LLC*, No. CV MJM-23-3034, 2025 WL 326985, at *4 (D. Md. Jan. 28, 2025) (granting motion for default judgment and awarding damages for “54 unsolicited telemarketing calls to Plaintiff[’s cell phone] in violation of 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200”); *Worsham*, 2016 WL 4592373, at *6 (awarding damages for calls to Plaintiff’s cell phone in violation of 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c)).

Plaintiff requests that the Court find that Defendants acted “willfully” or “knowingly” and award Plaintiff treble damages. *See* 47 U.S.C. § 227(c)(5) (“[T]he 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.”). Plaintiff’s claim that Defendants’ actions meet the standard for enhanced damages under the TCPA is a legal rather than a factual allegation and need not be accepted as true for purposes of the instant default judgment motions. *Dores*, 2016 WL 3511744, at *3. The record in this case does not support a finding that Estrada and Consumer Solution Center acted “willfully or knowingly.” Moreover, the question of whether to award treble damages is committed to the Court’s discretion even upon a finding that a violation was “willful[] or knowing[].” 47 U.S.C. § 227(c)(5). In similar situations, “when liability is established through default judgment rather than the merits, courts routinely award the minimum statutory damages

amount.” *Dores*, 2016 WL 3511744, at *3 (citing *Malibu Media, LLC v. Flanagan*, No. 2:13-CV-5890, 2014 WL 2957701, at *3 (E.D. Pa. July 1, 2014)).

Under the VTPPA, “[a]ny natural person who is aggrieved by a violation of this chapter shall be entitled . . . to recover from any responsible person damages in the amount of \$500 for a first violation, \$1,000 for a second violation, and \$5,000 for each subsequent violation.” Va. Code § 59.1-515(A). For “willful violation[s], the court may, in its discretion, increase the amount of any damages awarded for a first or second violation . . . to an amount not exceeding \$5,000.” *Id.* § 59.1-515(B). Here, Plaintiff has plausibly alleged that the calls made by Estrada on September 23 and 25, 2019 violated section 59.1-514 of the VTPPA. The record in this case does not support a finding that Estrada and Consumer Solution Center acted willfully. The undersigned thus finds that Plaintiff is entitled to recover damages in the amount of \$500 for the September 23, 2019 call and \$1,000 for the September 25, 2019 call. Together with the \$1,000 in damages under the TCPA, Plaintiff is entitled to damages in the amount of \$2,500.

2. Interest

The Amended Complaint requests “prejudgment interest at the maximum legal rate.” (Dkt. No. 19 at 36.) In the proposed orders attached to Plaintiff’s default judgment motions, Plaintiff requests “interest on the judgment at the legal rate until the judgment is satisfied” and “post-judgment interest as provided by law.” (Dkt. No. 51-6 at 2; Dkt. No. 60-1 at 2.) Plaintiff provides no binding or persuasive authority to support his requests for pre-judgment or post-judgment interest on an award of statutory damages under the TCPA or VTPPA. Accordingly, the undersigned declines to award pre-judgment or post-judgment interest on Plaintiff’s statutory damages award.

3. Injunctive Relief

The TCPA provides a private right of action for injunctive relief as well as damages. 47 U.S.C. § 227(c)(5). In the Amended Complaint, Plaintiff requests “[i]njunctive relief against Defendants, and each of them, to prevent future wrongdoing.” (Dkt. No. 19 at 36.) Plaintiff did not renew his request for injunctive relief in either motion for default judgment, the proposed orders attached to Plaintiff’s default judgment motions, or during the January 3, 2025 hearing. The undersigned thus declines to award injunctive relief.

4. Attorneys’ Fees and Costs

Plaintiff also seeks “[r]easonable attorney fees and costs incurred.” (Dkt. No. 19 at 37.) Plaintiff renewed his request for “filing” and “[s]ervice” fees in the initial motion for default judgment. (Dkt. No. 51 at 17.) Specifically, Plaintiff requests \$402.00 for filing fees and \$124.00 for “Service fees.” (*Id.*) The VTPPA provides for “reasonable attorney fees and court costs” in addition to any damages. Va. Code § 59.1-515(C). The undersigned finds that Plaintiff is entitled to reasonable costs incurred in this matter.¹²

IV. Recommendations

For the foregoing reasons, it is hereby recommended that:

1. Plaintiff’s Motion for Default Judgment (Dkt. No. 51) and renewed Motion for Default Judgment (Dkt. No. 60) be **GRANTED IN PART**;
2. Judgment be entered in Plaintiff’s favor against Defendants Consumer Solution Center and Estrada, jointly and severally, for violations of the TCPA, 47 U.S.C.

¹² Plaintiff is proceeding *pro se* and, as of the filing of the initial default judgment motion, had not incurred any attorneys’ fees. (*See* Dkt. No. 51 at 17 (“Plaintiff also requests the court to award reasonable attorney fees and court costs should Plaintiff require legal representation *in the future* on this matter.”) (emphasis added).)

227(c), and VTPPA, Va. Code § 59.1-514;

3. Plaintiff be awarded damages totaling \$2,500, representing statutory damages under the TCPA, 47 U.S.C. § 227(c)(5)(B), and VTPPA, Va. Code § 59.1-515(A);
and
4. Plaintiff be awarded court costs in the amount of \$526.00 under the VTPPA, Va. Code § 59.1-515(C).

V. Notice

Objections to this Report and Recommendation must be filed within fourteen (14) days of service of this Report and Recommendation. Failure to file timely objections to this Report and Recommendation waives appellate review of the substance of the Report and Recommendation and waives appellate review of a judgment based on the Report and Recommendation.

ENTERED this 14th day of July, 2025.

Lindsey R. Vaala

Hon. Lindsey R. Vaala
United States Magistrate Judge

Alexandria, Virginia