

IN THE
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DANIEL HUMAN,)	
)	
Plaintiff,)	Case No. 4:24-cv-01177-MTS
)	
vs.)	
)	
Fisher Investments, Inc., and)	
Smart Asset Advisors, LLC,)	
)	
Defendants.)	

STATEMENT OF UNCONTROVERTED MATERIAL FACTS

1. Plaintiff Daniel Human is an individual and Missouri resident residing in this District. (FAC ECF No. 33, p. 3, ¶10; Affidavit of Daniel Human, ¶1).

2. Defendant Fisher Investments, Inc. is a financial investment and advice company that solicits customers all over the country to purchase their services. (FAC ECF No. 33, p. 3, ¶11; CC ECF No. 45, p. 2, ¶11).

3. Defendant SmartAsset Advisors, LLC is a Delaware based company that makes telemarketing calls or employs its agents to make telemarketing calls and sells leads to Defendant Fisher Investments, Inc. to illegally contact residents within other Districts, particularly to persons on the Federal and Missouri do not call registries, just as it did with the Plaintiff. (FAC ECF No. 33, p. 3, ¶12; CC ECF No. 45, p. 2, ¶1).

4. Plaintiff Daniel Human is and was at all times mentioned herein, a person as defined by 47 U.S.C. §153(39) and a qualified Missouri subscriber who has lodged his

objections to the Missouri Attorney General over receiving any telemarketer calls, whatsoever. (First Amended Complaint, p. 8, ¶31; Affidavit of Daniel Human, ¶1).

5. Plaintiff Daniel Human, a residential subscriber, personally registered his residential cellular telephone number (the “Number”), 208-390-XXXX, on the National and Missouri State Do Not Call Registries in 2023 to cease all telemarketing calls to his phone, where they have remained continuously since and lodged his objection to receiving these calls with the Missouri Attorney General contemporaneously with the registration. (FAC ECF No. 33, p. 9, ¶32; Affidavit of Daniel Human, ¶3; Exhibit D – No Call Registries).

6. Plaintiff Daniel Human is the sole subscriber, natural person and the sole user of the cell phone number 208-390-XXXX and is financially responsible for the bill associated with the above personal residential cellular phone. (Affidavit of Daniel Human, ¶2; Exhibit A – Verizon Phone Records; Exhibit B – Chase Credit Card Statements).

7. Plaintiff Daniel Human's personal residential phone described above is not associated with any business. (Affidavit of Daniel Human, ¶4).

8. Plaintiff Daniel Human's above-described phone number is solely for personal and family use. (Affidavit of Daniel Human, ¶5).

9. On or about June 24, 2024, Plaintiff Daniel Human began receiving unsolicited telemarketing calls on his private residential cellphone from a telemarketer identified as Teddy Parks acting on behalf of Fisher Investments without his prior express written consent. (Affidavit of Daniel Human, ¶6; Exhibit E – telemarketer telephone call notes).

10. The telemarketer made the first of the eight (8) unsolicited telemarketing calls stating they were employed by Defendant Fisher Investments and called to market investment related services for Fisher. (FAC ECF No. 33, p. 9, ¶33; Affidavit of Daniel Human, ¶7; Exhibit E – telemarketer telephone call notes).

11. During this series of calls, Plaintiff Daniel Human could not identify the caller prior to answering as the telemarketer blocked or circumvented his caller identification service which scared him and made him believe there was a problem with his family or friends.

(FAC ECF No. 33, p. 9, ¶34; Affidavit of Daniel Human, ¶8; Exhibit E –telemarketer telephone call notes).

12. Upon answering the calls, Plaintiff Daniel Human was met with various pauses, clicks, automated prompts, squealing and computer-generated sounds and then dead air that appeared to be from an automatic telephone dialer. (FAC ECF No. 33, p. 9, ¶35; Affidavit of Daniel Human, ¶9; Exhibit E – telemarketer telephone call notes).

13. When a live telemarketer finally came on the line, Plaintiff Daniel Human stated that they were interrupting his family time and that he was extremely busy and could not take the call. (FAC ECF No. 33, p. 9, ¶35; Affidavit of Daniel Human, ¶10; Exhibit E – telemarketer telephone call notes).

14. The telemarketers continued to call Plaintiff Daniel Human's private residential number and engaged in the same sale script during each call, which he found to be a violation of his privacy, right to seclusion, and was harassing, annoying, frustrating and abusive. (FAC ECF No. 33, p. 9, ¶35; Affidavit of Daniel Human, ¶11; Exhibit E –telemarketer telephone call notes).

15. On more than one occasion telemarketer Teddy Parks made Plaintiff Daniel Human's telephone ring and when he sent the call to voicemail, Parks failed to leave a message, properly identifying himself, or stating the purpose of the call, which Plaintiff further found to be a violation of his privacy, right to seclusion, and was harassing, annoying, frustrating and abusive. (Affidavit of Daniel Human, ¶12; Exhibit E – telemarketer telephone call notes).

16. Each of the illegal telemarketing calls were condoned, encouraged, enticed, and ratified by Defendants Fisher Investments and their agents, employees and/or vendors, as detailed supra. (FAC ECF No. 33, p. 10, ¶36; Affidavit of Daniel Human, ¶13; Exhibit C – Smart Asset lead; Exhibit E – telemarketer telephone call notes).

17. The calls occurred on the following dates and times from the following numbers:

- a. 6/24/24 10:32 am (800) 681-1312
- b. 2024/06/24 15:32:45 (800) 681-1312
- c. 2024/06/27 19:45:06 (800) 681-1312
- d. 2024/07/01 21:51:49 (800) 682-8096
- e. 2024/07/09 15:28:08 (800) 682-8096
- f. 2024/07/12 19:06:56 (800) 682-8096
- g. 2024/07/17 11:12:48 (800) 681-1312
- h. 7/17/24 11:06 (800) 682-8096

(FAC ECF No. 33, p. 10, ¶36; Affidavit of Daniel Human, ¶13; Exhibit A –Verizon Phone Records; Exhibit E – telemarketer telephone call notes).

18. During each call the telemarketer asked Plaintiff Daniel Human to purchase investment services from or through Defendants Fisher Investments. (Affidavit of Daniel Human, ¶14; Exhibit E – telemarketer telephone call notes).

19. The defendant’s continued and persistent calls were annoying, harassing, abusive and took up Plaintiff Daniel Human's phone time as well as personal time. (Affidavit of Daniel Human, ¶15; Exhibit E – telemarketer telephone call notes).

20. The Defendants persistently harassed and solicited Plaintiff Daniel Human to purchase investment advice from Defendant Fisher Investments and their agents, employees and/or vendors, even though he is registered on the Federal and Missouri Do Not Call registry and has been for many months prior to their unsolicited marketing calls to his private, personal residential cell phone. (FAC ECF No. 33, p. 10, ¶37; Affidavit of Daniel Human, ¶16; Exhibit D – No Call Registries; Exhibit E – telemarketer telephone call notes).

21. Plaintiff Daniel Human's privacy and right to seclusion have been grossly, deliberately, and repeatedly violated by the above-described telemarketing calls and he was severely annoyed, harassed, humiliated, abused and frustrated by several Fisher Investments telemarketers. (FAC ECF No. 33, p. 10, ¶38; Affidavit of Daniel Human, ¶17. Exhibit E – telemarketer telephone call notes).

22. Defendant’s aggravating and annoying phone calls trespassed upon and interfered with Plaintiff Daniel Human's rights and interests in his cellular telephone and cellular telephone line, caused him to incur provider fees, the depletion of his battery life, wear, and tear on his phone equipment and by intruding upon his right to privacy and seclusion. (FAC ECF No. 33, p. 11, ¶40; Affidavit of Daniel Human, ¶18. Exhibit E – telemarketer telephone call notes).

23. Defendant's phone calls personally harmed Plaintiff Daniel Human by wasting his time. (FAC ECF No. 33, p. 11, ¶42; Affidavit of Daniel Human, ¶19; Exhibit E –telemarketer telephone call notes).

24. Plaintiff Daniel Human never provided his prior written express consent to receive or request these calls and at no time did the telemarketer state that he received information from the website smartasset.com. (FAC ECF No. 33, p. 10, ¶39; Affidavit of Daniel Human, ¶20; Exhibit E – telemarketer telephone call notes).

25. Throughout the entire course of the pending litigation above, Defendant Fisher has not provided a single document which illustrates that Plaintiff Daniel Human provided prior express written consent to make the calls to his private residential number listed above, nor did anyone do so on his behalf. (Affidavit of Daniel Human, ¶21; See Humans Motion to Compel ECF Nos. 130-131, 134, 137).

26. Defendant Fisher Investment's illegal phone calls were committed knowingly and willfully because Plaintiff Daniel Human began hanging up on them and they would repeatedly call back and hang up with no message even though he is registered on the Missouri and national do not call registries. (Affidavit of Daniel Human, ¶22; Exhibit D – No Call Registries; Exhibit E – telemarketer telephone call notes).

27. Plaintiff Daniel Human has been harmed by the acts of Defendants in that his rights to privacy and seclusion have been violated, he was aggravated, annoyed, harassed, abused, and frustrated and caused physical injury, including incurring telephone service provider fees, wear and tear on his phone, damage and disruption to his phone's battery life, they intruded on his privacy and right to seclusion, and other injuries and

costs incurred pursuing this litigation. (FAC ECF No. 33, p. 11, ¶41; Affidavit of Daniel Human, ¶23; Exhibit E – telemarketer telephone call notes).

28. Plaintiff Daniel Human has never provided his express written consent to receive these calls on his private residential phone number to Defendants Fisher or Smart AssetAdvisors, nor have the Defendants provided him with a copy of any express written consent to place their calls to the number dialed. (FAC ECF No. 33, p. 10, ¶39; Affidavit of Daniel Human, ¶24; Exhibit C – Smart Asset lead).

29. At no time during any of the Defendant’s telemarketing calls did any telemarketer or Defendant Fisher Investments state that their unsolicited calls were being placed for emergency purposes. (FAC ECF No. 33, p. 12, ¶48; Affidavit of Daniel Human, ¶25; Exhibit E – telemarketer telephone call notes).

30. Plaintiff Daniel Human does not have a prior business relationship with Defendant Fisher Investments, their telemarketers, or SmartAsset Advisors, LLC. (First Amended Complaint, p. 10, ¶37; Affidavit of Daniel Human, ¶26).

31. Plaintiff Daniel Human has never visited the website smartasset.com or fisher.com nor has anyone done so and input his phone number with his knowledge or consent. (Affidavit of Daniel Human, ¶27; Exhibit F – Smart Asset lead).

32. Plaintiff Daniel Human has never provided Fisher or SmartAsset.com with his cellphone number. (Affidavit of Daniel Human, ¶28; Exhibit F – Smart Asset lead).

33. Plaintiff Daniel Human has never provided telemarketer Teddy Parks with his express written consent to dial his private residential phone number. (Affidavit of Daniel Human, ¶29; Exhibit E – telemarketer telephone call notes).

34. During the progress of this litigation, Plaintiff Daniel Human's antiquated used computer became non-functional and had to be replaced because it would no longer power-up. (Affidavit of Daniel Human, ¶30).

35. Plaintiff Daniel Human fully advised Defendant Fisher's counsel via email, who was also counsel in another case in which he was a Plaintiff, of his computer problems, the need to replace it, and that he had discarded to broken computer in the trash and bought a new one. (Affidavit of Daniel Human, ¶31).

36. As an elderly man with extremely limited knowledge of computers, Plaintiff Daniel Human did not know that information from the broken and discarded computer could possibly be retrieved. (Affidavit of Daniel Human, ¶32).

37. Plaintiff Daniel Human also voluntarily took the stand in open Court in February or March of 2025 and informed United States District Court Schelp under oath that he discarded the broken computer and had no idea information could possibly be retrieved from a broken computer. (Affidavit of Daniel Human, ¶33).

38. As a sanction for Plaintiff Daniel Human's mistake, Judge Schelp issued the harshest sanction allowed by law and an order striking his pleadings. (Affidavit of Daniel Human, ¶34).

39. In the interim, Defendant Fisher filed a meritless CC ECF No. 45 accusing Plaintiff Daniel Human of fraud, without any evidence whatsoever that he had done so. (Affidavit of Daniel Human, ¶35; CC ECF No. 45, p. 1).

40. The only evidence Fisher produced which they allege to be fraud is a lead submitted to Smartasset.com, which does not contain Plaintiff Daniel Human's name, address, or IP address. (Affidavit of Daniel Human, ¶36; Exhibit F – Smart Asset lead).

41. Defendant Fisher's representatives also ran a Trustle Report on the lead which evidenced that the lead was generated outside of the United States of America as depicted by the geolocation on Fisher's report. (Affidavit of Daniel Human, ¶37; Exhibit G – Trestle Report redacted).

42. Plaintiff Daniel Human directed his attorney to serve Defendant Fisher with final discovery requests requesting Fisher to produce any alleged evidence of fraud they possessed, as none had been previously disclosed, which he did so in July 2025.

(Affidavit of Daniel Human, ¶38).

43. Defendant Fisher responded that the only evidence of fraud they possessed was: Records reflecting consent to call Mr. Human's phone number via a SmartAsset lead, records about Fisher's calls with Mr. Human, and documents reflecting Fisher's damages which was Fisher's counsel's bills amounting to about \$150,000.00 and alleged lost employee time. (Affidavit of Daniel Human, ¶39; Exhibit C – Smart Asset lead; Exhibit G –Trestle Report redacted).

44. Plaintiff Daniel Human directed his attorney to file a motion to compel Defendant Fisher to produce all evidence that he had committed fraud, which was filed on July 28, 2025. (Affidavit of Daniel Human, ¶40).

45. Fisher again responded that they possess no further evidence to produce. (Affidavit of Daniel Human, ¶41).

46. Plaintiff Daniel Human's attorney, at his direction, filed a detailed reply asking the Court to Order Fisher to produce the evidence of fraud they have repeatedly misrepresented to the Court that they possess, but will not produce the purported evidence. (Affidavit of Daniel Human, ¶42).

Respectfully submitted,

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This 2nd day of September, 2025.