

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

JAMES JULIAN,

Plaintiff,

v.

**CLEARLINK INSURANCE AGENCY,
LLC, BOSS LEADS, LLC, and EDM
LEADS LLC**

Defendant.

Case No. 2:2024-cv-02293-KHV-RES

**DEFENDANT CLEARLINK INSURANCE AGENCY, LLC'S
ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S SECOND
AMENDED COMPLAINT AND COUNTERCLAIM**

Defendant Clearlink Insurance Agency, LLC hereby submits its Answer and Affirmative Defenses to Plaintiff James Julian's Second Amended Complaint ("Complaint"), as well as its Counterclaim for Fraud.

With respect to Plaintiff's unnumbered initial paragraph, Clearlink admits that Plaintiff purports to bring this action for alleged violations of the TCPA. Clearlink denies all remaining allegations in this paragraph, and further denies that Plaintiff is entitled to any relief whatsoever against Clearlink.

INTRODUCTION¹

1. The allegations in paragraph 1 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is

¹ For the Court's convenience, Clearlink has incorporated the "headings" that appear in the Complaint, as well as the formatting from those headings. But Clearlink does not necessarily agree with and does not admit the characterizations of such headings unless specifically admitted herein. Nor does Clearlink waive any right to object to those characterizations.

required, Clearlink admits only that the Telephone Consumer Protection Act, or TCPA, speaks for itself. Clearlink denies the remaining allegations in paragraph 1.

2. Clearlink denies the allegations in paragraph 2 of the Complaint.

3. Clearlink admits that Plaintiff purports to bring this action for alleged violations of the TCPA. Clearlink denies the remaining allegations in paragraph 3.

4. Clearlink admits only that Plaintiff purports to bring this action on behalf of himself and all other allegedly similarly situated persons. Except as expressly admitted, Clearlink denies any remaining allegations in paragraph 4 of the Complaint and further denies the putative class can be certified.

JURISDICTION AND VENUE

5. The allegations in paragraph 5 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink admits that Plaintiff purports to invoke federal-question jurisdiction through his TCPA claim.

6. The allegations in paragraph 6 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink denies the allegations in paragraph 6, including subparts (a) and (b). Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 6 of the Complaint as to Defendants Boss Leads, LLC and EDM Leads, LLC and therefore denies them.

7. The allegations in paragraph 7 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink denies the allegations in paragraph 7.

PARTIES

8. Clearlink denies the allegations in paragraph 8 of the Complaint.

9. Clearlink admits the allegations in paragraph 9 of the Complaint.

10. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 10 of the Complaint and therefore denies them.

11. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 11 of the Complaint and therefore denies them.

FACTUAL ALLEGATIONS

12. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 12 of the Complaint and therefore denies them.

13. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 13 of the Complaint and therefore denies them.

14. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 14 of the Complaint and therefore denies them.

15. The allegations in paragraph 15 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink admits only that the referenced provision of the TCPA, 47 U.S.C. § 153(39), speaks for itself. Clearlink denies any remaining allegations in paragraph 15.

16. Clearlink denies the allegations in paragraph 16 of the Complaint.

17. Clearlink denies the allegations in paragraph 17 of the Complaint.

18. Clearlink denies the allegations in paragraph 18 of the Complaint.

19. Clearlink denies the allegations in paragraph 19 of the Complaint.

20. Clearlink denies the allegations in paragraph 20 of the Complaint.

21. Clearlink denies the allegations in paragraph 21 of the Complaint.

22. Clearlink denies the allegations in paragraph 22 of the Complaint.

23. Clearlink denies the allegations in paragraph 23 of the Complaint.

24. Clearlink denies the allegations in paragraph 24 of the Complaint.

25. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 25 of the Complaint and therefore denies them.

26. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 26 of the Complaint and therefore denies them.

27. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 27 of the Complaint and therefore denies them.

28. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 28 of the Complaint and therefore denies them.

29. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 29 of the Complaint and therefore denies them.

30. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 30 of the Complaint and therefore denies them.

31. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 31 of the Complaint and therefore denies them.

32. Clearlink denies the allegations in paragraph 32 of the Complaint.

33. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 33 of the Complaint and therefore denies them.

34. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 34 of the Complaint and therefore denies them.

35. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 35 of the Complaint and therefore denies them.

36. Clearlink denies the allegations in paragraph 36 of the Complaint.

37. Clearlink denies the allegations in paragraph 37 of the Complaint.

38. Clearlink denies the allegations in paragraph 38 of the Complaint.

39. Clearlink denies the allegations in paragraph 39 of the Complaint.

40. Clearlink denies the allegations in paragraph 40 of the Complaint.

41. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 41 of the Complaint and therefore denies them.

42. Clearlink denies the allegations in paragraph 42 of the Complaint.

43. Clearlink denies the allegations in paragraph 43 of the Complaint.

44. Clearlink denies the allegations in paragraph 44 of the Complaint.

45. Clearlink denies the allegations in paragraph 45 of the Complaint.

46. Clearlink denies the allegations in paragraph 46 of the Complaint.

47. Clearlink denies the allegations in paragraph 47 of the Complaint.

48. Clearlink denies the allegations in paragraph 48 of the Complaint.

49. Clearlink denies the allegations in paragraph 49 of the Complaint

50. Clearlink lacks sufficient knowledge to admit or deny the allegations in paragraph 50 of the Complaint and therefore denies them.

51. Clearlink denies the allegations in paragraph 51 of the Complaint.

52. Clearlink denies the allegations in paragraph 52 of the Complaint.

53. Clearlink denies the allegations in paragraph 53 of the Complaint.

54. Clearlink denies the allegations in paragraph 54 of the Complaint.

55. Clearlink denies the allegations in paragraph 55 of the Complaint.

56. Clearlink denies the allegations in paragraph 56 of the Complaint.

**INJURY, HARM, DAMAGES, AND ACTUAL DAMAGES TO PLAINTIFF AS A
RESULT OF THE CALLS²**

57. Clearlink denies the allegations in paragraph 57 of the Complaint.

58. Clearlink denies the allegations in paragraph 58 of the Complaint.

59. Clearlink denies the allegations in paragraph 59 of the Complaint.

60. Clearlink denies the allegations in paragraph 60 of the Complaint.

**VICARIOUS LIABILITY OF DEFENDANT CLEAR LINK FOR THE
ACTIONS OF THE TELEMARKETING COMPANIES³**

61. Clearlink denies the allegations in paragraph 61 of the Complaint.

62. Clearlink denies the allegations in paragraph 62 of the Complaint.

63. Clearlink denies the allegations in paragraph 63 of the Complaint, including subparts (a) through (e).

64. Clearlink denies the allegations in paragraph 64 of the Complaint.

65. Clearlink denies the allegations in paragraph 65 of the Complaint.

66. Clearlink denies the allegations in paragraph 66 of the Complaint.

67. Clearlink denies the allegations in paragraph 67 of the Complaint.

68. Clearlink denies the allegations in paragraph 68 of the Complaint.

69. Clearlink denies the allegations in paragraph 69 of the Complaint.

70. Clearlink denies the allegations in paragraph 70 of the Complaint.

71. Clearlink denies the allegations in paragraph 71 of the Complaint.

² Clear Link denies the allegations of this heading.

³ Clear Link denies the allegations of this heading.

RATIFICATION

72. Clearlink denies the allegations in paragraph 72 of the Complaint.
73. Clearlink denies the allegations in paragraph 73 of the Complaint.
74. Clearlink denies the allegations in paragraph 74 of the Complaint.
75. Clearlink denies the allegations in paragraph 75 of the Complaint.
76. Clearlink denies the allegations in paragraph 76 of the Complaint.
77. Clearlink denies the allegations in paragraph 77 of the Complaint.
78. Clearlink denies the allegations in paragraph 78 of the Complaint.
79. Clearlink denies the allegations in paragraph 79 of the Complaint.
80. Clearlink denies the allegations in paragraph 80 of the Complaint.

CLASS ACTION ALLEGATIONS

81. Clearlink admits only that Plaintiff purports to bring this action on behalf of himself and all other similarly situated persons. Except as expressly admitted, Clearlink denies any remaining allegations in paragraph 81 of the Complaint and further denies the putative class can be certified.

82. Clearlink admits only that Plaintiff purports to bring this action on behalf of himself and all other similarly situated persons and defines the putative class as described in paragraph 82 of the Complaint. Except as expressly admitted, Clearlink denies any remaining allegations in paragraph 82 of the Complaint and further denies the putative class can be certified.

83. Clearlink admits only that Plaintiff purports to exclude from the putative class defined in paragraph 82 of the Complaint “counsel, the Defendant, and any entities in which the Defendant have a controlling interest, the Defendant’s agents and employees, any judge

to whom this action is assigned, and any member of such judge's staff and immediate family.” Clearlink denies any remaining allegations in paragraph 83 of the Complaint and further denies the putative class can be certified.

84. Clearlink denies the allegations in paragraph 84 of the Complaint.

85. Clearlink denies the allegations in paragraph 85 of the Complaint.

86. Clearlink denies the allegations in paragraph 86 of the Complaint.

87. Clearlink denies the allegations in paragraph 87 of the Complaint.

88. Clearlink denies the allegations in paragraph 88 of the Complaint, including subparts a) through d).

89. Clearlink denies the allegations in paragraph 89 of the Complaint.

90. Clearlink denies the allegations in paragraph 90 of the Complaint.

91. Clearlink denies the allegations in paragraph 91 of the Complaint.

92. Clearlink denies the allegations in paragraph 92 of the Complaint.

CAUSES OF ACTION

COUNT I

DNC Violations

Violation of the TCPA, 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)

93. Clearlink incorporates by reference its response to paragraphs 1 through 92.

94. The allegations in paragraph 94 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink admits only that the TCPA speaks for itself. Clearlink denies any remaining allegations in paragraph 94.

95. Clearlink denies the allegations in paragraph 95 of the Complaint.

96. Clearlink denies the allegations in paragraph 96 of the Complaint.

97. Clearlink denies the allegations in paragraph 97 of the Complaint.

98. Clearlink denies the allegations in paragraph 98 of the Complaint.

99. Clearlink denies the allegations in paragraph 99 of the Complaint.

COUNT II

Violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by Artificial or Prerecorded Telemarketing Without Prior Express Written Consent

100. Clearlink incorporates by reference its response to paragraphs 1 through 99.

101. Clearlink denies the allegations in paragraph 101 of the Complaint.

102. Clearlink denies the allegations in paragraph 102 of the Complaint.

103. Clearlink denies the allegations in paragraph 103 of the Complaint.

104. Clearlink denies the allegations in paragraph 104 of the Complaint.

105. Clearlink denies the allegations in paragraph 105 of the Complaint.

106. The allegations in paragraph 106 are not well-pleaded allegations of fact and are instead legal conclusions to which no response is required. To the extent a response is required, Clearlink admits that Plaintiff seeks damages for alleged violations of the TCPA. Clearlink denies all remaining allegations in paragraph 106, and further denies that Plaintiff is entitled to any relief whatsoever against Clearlink.

THIRD CAUSE OF ACTION

Telephone Consumer Protection Act (Violations of 47 U.S.C. § 227) (On Behalf of Plaintiff and the National Do Not Call Registry Class)

107. Clearlink incorporates by reference its response to paragraphs 1 through 106.

108. Clearlink denies the allegations in paragraph 108 of the Complaint.

109. Clearlink denies the allegations in paragraph 109 of the Complaint.

110. Clearlink denies the allegations in paragraph 110 of the Complaint.

111. Clearlink denies the allegations in paragraph 111 of the Complaint.

112. Clearlink denies the allegations in paragraph 112 of the Complaint.

PRAYER FOR RELIEF

In response to the unnumbered “PRAYER FOR RELIEF” paragraph following paragraph 112, Clearlink denies each and every allegation in subparagraphs A through J. Clearlink further denies that Plaintiff is entitled to statutory damages, declaratory relief, equitable relief, injunctive relief, fees, costs, class certification, or any relief whatsoever.

GENERAL DENIAL

Clearlink denies any and all allegations set forth in the Complaint that are not specifically admitted herein.

AFFIRMATIVE DEFENSES

Clearlink hereby asserts the following defenses to the claims and allegations set forth in the Complaint. By asserting these defenses, Clearlink does not admit that it bears the burden of proof or the burden of persuasion with respect to any particular defense.

**FIRST AFFIRMATIVE DEFENSE
(Lack of Personal Jurisdiction)**

Plaintiff’s claims fail because this Court lacks personal jurisdiction over Clearlink. Clearlink is not subject to the general jurisdiction of this Court because it is not “at home” in Kansas. Nor is it subject to specific personal jurisdiction because Clearlink did not purposefully avail itself of this forum or purposefully direct its activities here. Any alleged calls at issue were placed by an independent third party whose contacts cannot be attributed to Clearlink for purposes of establishing personal jurisdiction.

**SECOND AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

The Complaint fails to allege facts sufficient to state a cause of action against Clearlink.

For example, Plaintiff failed to show that any calls he allegedly received were calls for “which the called party is charged” as required by the TCPA.

**THIRD AFFIRMATIVE DEFENSE
(Consent)**

Plaintiff and the putative class members are barred from asserting their claims in whole or in part because the calls at issue were made with prior express permission and/or consent, which was not effectively revoked.

**FOURTH AFFIRMATIVE DEFENSE
(No Agency or Vicarious Liability and Proportional Allocation of Fault)**

Any damages, injury, violation, or wrongdoing alleged in the Complaint were caused by third parties, Plaintiff, or members of the putative class for which Clearlink cannot be held vicariously liable. Further, Clearlink did not authorize, ratify, encourage, participate in, aid, abet, or assist in any of the conduct alleged in the Complaint and cannot be held liable for it. For example, to the extent contractors caused any damages, injury, violations of the law or wrongdoing or engaged in the conduct alleged in the Complaint, those vendors acted outside the scope or in violation of the parties’ agreements and Clearlink did not approve of that conduct. As such, Clearlink cannot be held vicariously liable. And even if it could, its liability, if any, must be eliminated or reduced by an amount proportionate to the fault attributable to third parties or Plaintiff.

**FIFTH AFFIRMATIVE DEFENSE
(Arbitration and Class Waiver)**

Plaintiff and the putative class members are barred from asserting their claims in this forum to the extent their claims are subject to a binding arbitration agreement and an agreement to pursue their disputes on an individual (non-class) basis, depriving the Court of jurisdiction over Plaintiffs’ claims, and rendering venue in this Court improper.

**SIXTH AFFIRMATIVE DEFENSE
(Acquiescence, Ratification, Estoppel, Waiver)**

Plaintiff and the putative class members are barred from asserting their claims, in whole or in part, by the doctrine of acquiescence, estoppel, waiver, and/or unclean hands.

**SEVENTH AFFIRMATIVE DEFENSE
(No Mitigation)**

To the extent that the Complaint alleges that Plaintiff and members of the putative class suffered any purported injury or damages, Plaintiff and members of the putative class failed to take any and all reasonable or necessary actions to avoid or reduce his damages, and any damages awarded to him must be reduced accordingly.

**EIGHTH AFFIRMATIVE DEFENSE
(No Willful or Negligent Misconduct; No Treble or Increased Damages)**

Any claim for treble or increased damages is barred because Clearlink did not engage in knowing or willful misconduct.

**NINTH AFFIRMATIVE DEFENSE
(No Proximate Cause)**

Clearlink did not proximately cause any damages, injury, or violation alleged in the Complaint. Instead, the acts of third parties (such as vendors, Plaintiff, putative class members, or other persons who provided the number on which Plaintiff or the putative class members were allegedly called) proximately caused the damages, injuries, or violations at issue, to the extent they occurred.

**TENTH AFFIRMATIVE DEFENSE
(No Standing)**

Any and all claims brought in the Complaint are barred because Plaintiff and members of the putative class lack standing. For example, Plaintiff and the putative class members

have not suffered any actual constitutional injury resulting from Clearlink's alleged conduct, and invited the harm he complains of, and therefore does not have standing pursuant to *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016).

**ELEVENTH AFFIRMATIVE DEFENSE
(Reasonable Practices and Procedures)**

Any and all claims brought in the Complaint are barred in whole or in part because Clearlink has established and instituted procedures so that Clearlink only called persons who consented to receive calls about Clearlink's services.

**TWELFTH AFFIRMATIVE DEFENSE
(Substantial Compliance)**

Clearlink is not liable to Plaintiff or members of the putative class because Clearlink acted reasonably and with due care and substantially complied with all applicable statutes, regulations, ordinances, and/or other laws.

**THIRTEENTH AFFIRMATIVE DEFENSE
(Good Faith)**

Any and all claims brought in the Complaint are barred because Clearlink possessed a good faith belief that it had consent to call the number at issue.

**FOURTEENTH AFFIRMATIVE DEFENSE
(FCC Exceeding Delegated Authority)**

Plaintiff and members of the putative class's TCPA claims are barred to the extent they are based on regulations or rulings that exceed the FCC's delegated authority. Nor can the Hobbs Act be validly or constitutionally applied to preclude Clearlink from raising defenses to an action arising under the TCPA or rules or regulations promulgated thereunder.

**FIFTEENTH AFFIRMATIVE DEFENSE
(First Amendment)**

The TCPA and the regulations and rules promulgated thereunder violate the First Amendment of the United States Constitution, including by imposing content-based restrictions on speech that fail to withstand strict scrutiny.

**SIXTEENTH AFFIRMATIVE DEFENSE
(Adequate Remedy at Law)**

The Complaint fails to state a claim for injunctive relief because Plaintiff and members of the putative class have an adequate remedy at law. For example, the TCPA provides for statutory penalties of \$500 to \$1,500 per call, or monetary compensation for actual damages.

**SEVENTEENTH AFFIRMATIVE DEFENSE
(Unclean Hands)**

Plaintiff and members of the putative classes are barred from asserting their claims, in whole or in part, by the doctrine of unclean hands. For example, Plaintiff and members of the putative class cannot assert claims under the TCPA if they acted in bad faith by, for example, providing the subject number referenced in the Complaint.

**EIGHTTEENTH AFFIRMATIVE DEFENSE
(Due Process)**

The application of the TCPA upon which the Complaint is based, including the imposition of statutory damages on Clearlink, would violate the Due Process provisions of the United States Constitution. For example, certain definitions contained in the TCPA render the statute unconstitutionally vague. Additionally, the statutory penalties sought by Plaintiff are excessive.

**NINETEENTH AFFIRMATIVE DEFENSE
(No Authorization to Make Calls)**

None of the subject calls were made by Clearlink, nor authorized to be made on its behalf.

**TWENTIETH AFFIRMATIVE DEFENSE
(No “Pre-recorded” or “Artificial” Voice)**

Plaintiff and members of the putative classes’ claims are barred because a “pre-recorded voice” or “artificial voice,” as defined by the TCPA, did not play, or wholly play, including without the assistance of a live agent in an interactive fashion, on the alleged calls.

**TWENTY-FIRST AFFIRMATIVE DEFENSE
(No “Call”)**

Clearlink did not “make any call” to Plaintiff or members of the putative class, as that term is used in the TCPA, 47 U.S.C. § 227(b)(1)(A).

**TWENTY-SECOND AFFIRMATIVE DEFENSE
(No “Charge”)**

Plaintiff and members of the putative class were not “charged for the call” with respect to the calls at issue in this lawsuit, as that term is used in the TCPA.

**TWENTY-THIRD AFFIRMATIVE DEFENSE
(Laches)**

Plaintiff and members of the putative class are barred from asserting their claims in whole or in part by the doctrine of laches.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE
(Established Business Relationship)**

All claims brought in the Complaint are barred to the extent Plaintiff or members of the putative class had an established business relationship with the caller or had previously purchased from the business enterprise for which the person is calling.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE
(Non-Residential Phone)**

Plaintiff and members of the putative classes' claims are barred to the extent the phone number contained in the Complaint is not a residential number.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE
(Reservation of Right to Assert Further Defenses)**

Clearlink has not knowingly or intentionally waived any applicable defenses, and hereby gives notice that it intends to rely on such other and further affirmative defenses as may become available during discovery in this action. Clearlink reserves the right to amend its Answer to assert any such defense.

COUNTERCLAIM

1. Plaintiff and Counterclaim Defendant James Julian (“Julian”) filed suit against Defendant and Counterclaim Plaintiff Clear Link Insurance Agency, LLC (“Clearlink” or “Defendant”) alleging that Defendant and/or its vendors EDM Leads, LLC (“EDM”) and Boss Leads LLC (“Boss Leads”) called his phone number, 913-908-**** (the “Subject Number”), and played a prerecorded voice message without his consent and despite the fact that it was on the National Do Not Call (“DNC”) Registry, in violation of the Telephone Consumer Protection Act (“TCPA”). But Julian or someone acting on his behalf gave his express consent to receive such calls on the Subject Number.

2. In other words, Julian perpetrated a fraud to bait calls that he could use as a pretense to start a TCPA lawsuit falsely claiming he received calls without consent.

3. Julian’s actions injured Defendant, which has been forced to incur costs investigating and responding to his false claims. Defendant seeks damages, including the lost time and attorneys’ fees incurred in responding to this action, and any other relief appropriate arising out of Julian’s fraud.

JURISDICTION AND VENUE

4. The Court has subject matter jurisdiction over Defendant’s counterclaims under 28 U.S.C. § 1367(a) because they are so related to Julian’s claims that they form part of the same case or controversy under Article III of the United States Constitution.

5. Venue is proper in this district because Julian resides in the District of Kansas and a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

6. Clearlink is a corporation that is organized and maintains its principal place of business in Utah.

7. Julian is an individual who resides in this district.

FACTUAL BACKGROUND

8. Under the TCPA, Congress afforded injured citizens a private right of action and statutory damages of \$500 for negligent violations of certain provisions of the TCPA, which can be trebled in cases of intentional and knowing violations.

9. Julian manufactured TCPA claims here in an attempt to extract a payment from Defendant and its independent vendors.

10. Among the services Clearlink offers are health insurance services for consumers who express interest in those services. To communicate effectively with consumers, and avoid litigation for alleged TCPA violations, Defendant and its vendors only call persons who are interested in its services and consent to receive calls about the same. Defendant further requires that its independent marketing vendors comply with the TCPA and only call persons who affirmatively consent to receive calls from Defendant.

11. Here, Julian provided express consent for Clearlink's vendors to call him in order to manufacture TCPA claims.

12. Julian subsequently received a phone call from a third party that transferred the call to Clearlink.

13. Despite knowing that he gave express consent to receive the Subject Call, Julian proceeded to file a class action lawsuit against the Defendant, alleging that it called him without his consent in purported violation of the TCPA.

COUNT I – FRAUD

14. Defendant realleges and incorporates Paragraphs 1 through 13 of these Counterclaims as if fully set forth herein.

15. Julian made false representations of material fact when he provided Clearlink and its vendors express consent to call him at the Subject Number with the intention of using those calls to manufacture a TCPA lawsuit.

16. Julian knew that these representations were false and intended that Defendant would rely on that information.

17. Clearlink reasonably relied on Julian's express consent so that both it and its independent contractor vendors and their sub-vendors would only contact persons legitimately interested in Clearlink's services and comply with its obligations under the TCPA.

18. Julian provided express consent knowing that the Subject Number would be contacted by companies that called persons who consented to receive such calls.

19. Julian has now filed this action against Defendant claiming that it is vicariously liable for EDM and Boss Leads, independent third-party vendors that allegedly contacted Julian on behalf of Defendant in violation of the TCPA. But in doing so, Julian continues to use his misrepresentations and false information to pursue his meritless claims against Defendant.

20. Because of Defendant's justifiable reliance on Julian's false representations, Defendant has suffered damages in the form of monetary and non-monetary harm, including harm to its valuable goodwill and reputation, client relationships, and other financial damages, including the legal fees and costs associated with investigating and defending

against Julian's claims.

PRAYER FOR RELIEF

WHEREFORE, Defendant/Counterclaim-Plaintiff Clear Link prays for judgment as follows:

- That Plaintiff take nothing from Defendant by reason of the Complaint and that judgment be entered in favor of Defendant;
- For dismissal of the Plaintiff's claims with prejudice;
- That the Court award Defendant damages, including costs and reasonable attorneys' fees for Julian's fraud; and
- For such other relief as the Court deems just and proper.

Respectfully submitted this 11th day of December 2024.

FLEESON, GOOING, COULSON & KITCH, LLC

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Counsel for Defendant Clearlink Insurance Agency, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of December 2024, I caused a true and correct copy of the foregoing to be electronically filed with the clerk of the court by using the CM/CEF system which will send a notice of electronic filing to all counsel of record.

/s/ Ryan K. Meyer
Ryan K. Meyer