

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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DAVID VAN ELZEN,

Plaintiff,

Case No. 24-1206

v.

AMERICAN HOME SHIELD  
CORPORATION,

Defendant.

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**DECLARATION OF TIMOTHY W. LOOSE IN SUPPORT OF DEFENDANT  
AMERICAN HOME SHIELD CORPORATION'S STREAMLINED MOTION FOR  
SUMMARY JUDGMENT**

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I, Timothy W. Loose, hereby declare and state:

1. I am an attorney duly licensed to practice law before all the courts of the State of California and am admitted to practice law before this Court. I am a partner with the law firm Gibson, Dunn & Crutcher LLP, and am one of the attorneys representing Defendant American Home Shield Corporation (“AHS”) in the above-titled action. I have personal knowledge of the matters stated here, and if asked to testify to them, I could and would do so competently.

2. On July 19, 2012, Plaintiff filed a Complaint in the case *Van Elzen v. Halsted Financial Services, LLC*, 12-cv-00740 (E.D. Wisc. 2012), attached hereto as **Exhibit A**.

3. On September 2, 2016, Plaintiff filed a Complaint in the case *Van Elzen v. Trend Capital Holdings, Inc.*, 3:16-cv-05759 (W.D. Wash. 2016), attached hereto as **Exhibit B**.

4. On March 3, 2017, Plaintiff filed a Complaint in the case *Van Elzen v. Tax Group Center, Inc.*, 4:17-cv-01105 (N.D. Cal. 2017), attached hereto as **Exhibit C**.

5. On March 23, 2017, Plaintiff filed a Complaint in the case *Van Elzen v. Revimedia, Inc.*, 1:17-cv-02131 (S.D.N.Y. 2017), attached hereto as **Exhibit D**.

6. On August 23, 2017, Plaintiff filed a Complaint in the case *Van Elzen v. MobileHelp, LLC*, 9:17-cv-80971 (S.D. Fla. 2017), attached hereto as **Exhibit E**.

7. On November 7, 2018, Plaintiff filed a Complaint in the case *Van Elzen v. Educator Group Plans, Insurance Services*, 1:18-cv-01373 (E.D. Wisc. 2018), attached hereto as **Exhibit F**.

8. On July 11, 2019, Plaintiff filed a Complaint in the case *Van Elzen v. Healthcare Solutions Team LLC*, 2:2019-cv-00990 (E.D. Wisc. 2019), attached hereto as **Exhibit G**.

9. On September 12, 2019, Plaintiff filed a Complaint in the case *Van Elzen v. Lighthouse Sales & Marketing, LLC*, 8:19-cv-02283 (M.D. Fla. 2019), attached hereto as **Exhibit H**.

10. On January 15, 2020, Plaintiff filed a Complaint in the case *Van Elzen v. Kalamata Research Services LLC*, 1:20-cv-00072 (E.D. Wisc. 2020), attached hereto as **Exhibit I**.

11. On May 6, 2020, Plaintiff filed a Complaint in the case *Van Elzen v. Global Strategy Group, LLC*, 1:20-cv-03541 (S.D.N.Y. 2020), attached hereto as **Exhibit J**.

12. On July 24, 2022, Plaintiff filed a Complaint in the case *Van Elzen v. Cody Askins LLC*, 1:22-cv-00840 (E.D. Wisc. 2022), attached hereto as **Exhibit K**.

13. On July 28, 2022, Plaintiff filed a Complaint in the case *Van Elzen v. Advisors Ignite USA, LLC*, 1:22-cv-00859 (E.D. Wisc. 2022), attached hereto as **Exhibit L**.

14. Attached hereto as **Exhibit M** are Defendant's responses to Plaintiff's first set of interrogatories.

15. Attached hereto as **Exhibit N** are Plaintiff's responses to Defendant's first set of interrogatories.

16. Michael Perry, Vice President and head of the Digital Forensics team at Stroz Friedberg, was deposed on August 21, 2025, in connection with the inspection conducted in connection with this litigation. Excerpts of his deposition transcript are attached hereto as **Exhibit O**.

17. Attached hereto as **Exhibit P** are excerpts from the deposition transcript of Plaintiff David Van Elzen.

18. Attached hereto as **Exhibit Q** is a true and correct copy of the screenshot from the intake flow of the website myhomequote.com, marked as Exhibit 36 for the purposes of Plaintiff's deposition.

19. Attached hereto as **Exhibit R** is a true and correct copy of the screenshot from the intake flow of the website homebuddy.com, marked as Exhibit 40 for the purposes of Plaintiff's deposition.

20. Attached hereto as **Exhibit S** are excerpts from the deposition transcript of Jorge Reyes, owner of IT Evolution LLC.

Pursuant to 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed this first day of December, 2025 at Los Angeles, California.

  
\_\_\_\_\_  
Timothy W. Loose

# **EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
GREEN BAY DIVISION**

<b>DAVID VAN ELZEN,</b>	)
	)
<b>Plaintiff,</b>	)
	)
<b>v.</b>	)
	)
<b>HALSTED FINANCIAL SERVICES,</b>	)
<b>LLC. and</b>	)
<b>PRAN NAVANANDAN,</b>	)
	)
<b>Defendants.</b>	)

**COMPLAINT**

NOW COMES the Plaintiff, DAVID VAN ELZEN, by and through his attorneys, LARRY P. SMITH & ASSOCIATES, LTD., and for his complaint against the Defendants, HALSTED FINANCIAL SERVICES, LLC. and PRAN NAVANANDAN, Plaintiff states as follows:

**I. PRELIMINARY STATEMENT**

1. This is an action for actual and statutory damages for violations of the Fair Debt Collection Practices Act (hereinafter “FDCPA”), 15 U.S.C. §1692, et seq.

**II. JURISDICTION & VENUE**

2. Jurisdiction arises under the FDCPA, 15 U.S.C. §1692 et seq., and pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue is proper in this district pursuant to 28 U.S.C. §1391(b).

**III. PARTIES**

4. DAVID VAN ELZEN, (hereinafter, “Plaintiff”) is an individual who was at all relevant times residing in the City of Appleton, County of Outagamie, State of Wisconsin.

5. The debt that Plaintiff was allegedly obligated to pay was a debt allegedly owed by Plaintiff to Check Advance (hereinafter, “the Debt”).

6. The Debt was for a payday loan, the funds of which were used for the personal use of Plaintiff and/or used for household expenditure.

7. At all relevant times, Plaintiff was a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

8. HALSTED FINANCIAL SERVICES, LLC., (hereinafter, “Halsted”) is a business entity engaged in the collection of debt within the State of Wisconsin. Halsted is registered as a limited liability company in the State of Illinois.

9. The principal purpose of Halsted’s business is the collection of debts allegedly owed to third parties.

10. Halsted regularly collects, or attempts to collect, debts allegedly owed to third parties.

11. During the course of its efforts to collect debts allegedly owed to third parties, Halsted sends to alleged debtors bills, statements, and/or other correspondence via the mail and/or electronic mail and initiates contact with alleged debtors via various means of telecommunication, such as the telephone and facsimile.

12. At all relevant times, Halsted acted as a debt collector as that term is defined by 15 U.S.C. §1692a(6).

13. At all relevant times, Halsted acted through its duly authorized agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

14. Defendant, PRAN NAVANANDAN, (hereinafter “Navanandan”) is an individual who, upon information and belief, was at all relevant times residing in the State of Illinois.

15. Upon information and belief, at all relevant times, Navanandan was acting as an Owner, Officer, Director, Manager and/or agent of Halsted.

16. Upon information and belief, at all relevant times, Navanandan was vested with the responsibility to manage Halsted.

17. Upon information and belief, at all relevant times, Navanandan was responsible for the management and/or affairs of Halsted.

18. Upon information and belief, at all relevant times, Navanandan was responsible for the day to day operations of Halsted.

19. Upon information and belief, at all relevant times, Navanandan was responsible for the supervision of Halsted’s employees, agents and/or representatives that were attempting to collect debts.

20. Upon information and belief, at all relevant times, Navanandan was responsible for the management of Halsted’s employees, agents and/or representatives that were attempting to collect debts.

21. As such, at all relevant times, Navanandan acted as a “debt collector” as that term is defined by 15 U.S.C. §1692a(6).

#### IV. ALLEGATIONS

##### COUNT I:

##### DAVID VAN ELZEN v. HALSTED FINANCIAL SERVICES, LLC

22. Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs in this complaint as though fully set forth herein.

23. In or around May 2011, Halsted initiated a telephone call to Plaintiff in an attempt to collect the Debt.

24. At the time Halsted initiated the telephone call to Plaintiff, as delineated above, Halsted left Plaintiff a voicemail message in an attempt to collect the Debt.

25. Plaintiff heard the voicemail message left for him by Halsted.

26. The voicemail message Halsted left for Plaintiff was Halsted's initial communication with Plaintiff relative to the Debt.

27. During the course of the voicemail message Halsted left for Plaintiff, as delineated above, Halsted stated that Plaintiff had twenty-four (24) hours to respond to Halsted.

28. Halsted further stated that if Plaintiff did not respond to Halsted within twenty-four (24) hours then the matter would be escalated.

29. At no time during the course of the voicemail message Halsted left for Plaintiff, did Halsted state that it was a debt collector, attempting to collect a debt and that any information obtained would be used for that purpose.

30. Halsted's representations to Plaintiff during the aforesaid voicemail message that Plaintiff had twenty-four (24) hours to respond to Halsted or the matter would be escalated had the effect of conveying to an unsophisticated consumer that if Plaintiff did not contact Halsted within the aforesaid time period then Halsted would immediately proceed with filing a lawsuit against Plaintiff.

31. Plaintiff did not contact Halsted within twenty-four (24) hours of Halsted having left the aforesaid voicemail message.

32. Halsted has not filed a lawsuit against Plaintiff for the debt he allegedly owes.

33. Upon information and belief, at the time of making the aforementioned threat, Halsted had no intention of filing a lawsuit against Plaintiff for the debt he allegedly owes.

34. Upon information and belief, Halsted has no authority to file a lawsuit against Plaintiff for the debt he allegedly owes.

35. Upon information and belief, at the time of making the aforementioned threat, Halsted had no authority to file a lawsuit against Plaintiff for the debt he allegedly owes.

36. In or around May 2012, and on multiple occasions therein, Halsted initiated multiple telephone calls to Plaintiff in a further attempt to collect the Debt.

37. During the course of the aforesaid time period, Halsted left multiple voicemail messages for Plaintiff in a further attempt to collect the Debt.

38. Again, at no time during the course of the voicemail messages Halsted left for Plaintiff, did Halsted state that it was a debt collector, attempting to collect a debt and that any information obtained would be used for that purpose.

39. In or around May 2012, Plaintiff engaged in a telephone conversation with Halsted.

40. During the course of the telephone conversation, Plaintiff requested that Halsted provide him with documentation relative to the Debt.

41. Plaintiff further told Halsted that he had never received any correspondence from Halsted relative to the Debt.

42. Halsted then attempted to confirm Plaintiff's mailing address by providing Plaintiff with the mailing address it had for Plaintiff.

43. Plaintiff told Halsted that the address Halsted had for Plaintiff was incorrect.

44. Plaintiff then provided Halsted with his present mailing address.

45. Halsted informed Plaintiff it would send him documentation to the address Plaintiff provided to Halsted.

46. Halsted has not provided to Plaintiff, within five (5) days of its initial communication to collect the alleged debt, with written confirmation of the amount of the debt, the name of the creditor to whom the debt is allegedly owed or a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector.

47. Alternatively, subsequent to the aforesaid telephone call between Plaintiff and Halsted, Halsted was aware that Plaintiff never received correspondence from Halsted, that it allegedly sent to Plaintiff at his previous address.

48. To date, Plaintiff has not received any correspondence from Halsted.

49. Upon information and belief, at no time subsequent to Halsted having been provided with Plaintiff's mailing address did Halsted send correspondence to Plaintiff at the address he provided to Halsted.

50. Halsted's representation to Plaintiff that it would send Plaintiff correspondence to his mailing address was false, deceptive and/or misleading given that, upon information and belief, Halsted did not send any correspondence to Plaintiff after Plaintiff provided Halsted with his mailing address.

51. In its attempts to collect the Debt allegedly owed by Plaintiff, Halsted violated the FDCPA, 15 U.S.C. §1692, in one or more of the following ways:

- a. Used false, deceptive, misleading and unfair or unconscionable means to collect or attempt to collect an alleged debt in violation of 15 U.S.C. §1692e;
- b. Threatened to take action that cannot legally or is not intended to be taken in violation of 15 U.S.C. §1692e(5);

- c. Used any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning the consumer in violation of 15 U.S.C. §1692e(10);
- d. Failed to disclose in communications that said communication was from a debt collector and that any information obtained during the communication will be used for the purpose of collecting a debt in violation of 15 U.S.C. §1692e(11);
- e. Failed to comply with the provisions of 15 U.S.C. §1692g(a); and,
- f. Was otherwise deceptive and failed to comply with the provisions of the FDCPA.

52. As a result of Halsted's violations as aforesaid, Plaintiff has suffered, and continues to suffer, personal humiliation, embarrassment, mental anguish and emotional distress.

WHEREFORE, Plaintiff, DAVID VAN ELZEN, by and through his attorneys, respectfully prays for judgment against, HALSTED FINANCIAL SERVICES, LLC, as follows:

- a. All actual compensatory damages suffered;
- b. Statutory damages of \$1,000.00;
- c. Plaintiff's attorneys' fees and costs;
- d. Any other relief deemed appropriate by this Honorable Court.

**COUNT II:**  
**DAVID VAN ELZEN v. PRAN NAVANANDAN**

53. Plaintiff re-alleges and incorporates by reference each of the preceding paragraphs in this complaint as though fully set forth herein.

54. In its attempts to collect the Debt allegedly owed by Plaintiff, Navanandan violated the FDCPA, 15 U.S.C. §1692, in one or more of the following ways:

- a. Used false, deceptive, misleading and unfair or unconscionable means to collect or attempt to collect an alleged debt in violation of 15 U.S.C. §1692e;
- b. Threatened to take action that cannot legally or is not intended to be taken in violation of 15 U.S.C. §1692e(5);

- c. Used any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning the consumer in violation of 15 U.S.C. §1692e(10);
- d. Failed to disclose in communications that said communication was from a debt collector and that any information obtained during the communication will be used for the purpose of collecting a debt in violation of 15 U.S.C. §1692e(11);
- e. Failed to comply with the provisions of 15 U.S.C. §1692g(a); and,
- f. Was otherwise deceptive and failed to comply with the provisions of the FDCPA.

55. As a result of Navanandan's violations as aforesaid, Plaintiff has suffered, and continues to suffer, personal humiliation, embarrassment, mental anguish and emotional distress.

WHEREFORE, Plaintiff, DAVID VAN ELZEN, by and through his attorneys, respectfully prays for judgment against, PRAN NAVANANDAN, as follows:

- e. All actual compensatory damages suffered;
- f. Statutory damages of \$1,000.00;
- g. Plaintiff's attorneys' fees and costs;
- h. Any other relief deemed appropriate by this Honorable Court.

**V. JURY DEMAND**

56. Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,  
**DAVID VAN ELZEN**

By: s/ David M. Marco  
Attorney for Plaintiff

Dated: July 18, 2012

David M. Marco (Atty. No.: 6273315)  
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# **EXHIBIT B**

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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

DAVE VAN ELZEN and AUBREY  
MOORE, individually and on behalf of all  
other similarly situated,

Plaintiffs,

TREND CAPITAL HOLDINGS, INC., a  
Delaware Corporation

NO. 3:16-CV-05759

COMPLAINT – CLASS ACTION

FOR DAMAGES PURSUANT TO 47  
U.S.C. §227. et seq. (TELEPHONE  
CONSUMER PROTECTION ACT),  
RCW 80.36.400 (AUTOMATIC  
DIALING AND ANNOUNCING  
STATUTE), RCW 19.86 (CONSUMER  
PROTECTION ACT), AND RCW  
80.36.390 (TELEPHONE  
SOLICITATION)

JURY DEMAND

Plaintiffs Dave Van Elzen (“Van Elzen”) and Aubrey Moore (“Moore”) (collectively  
“Plaintiffs”), by their undersigned attorneys, for this class action complaint against  
Defendant Trend Capital Holdings Inc. (“Trend Capital”), allege as follows on their own  
personal knowledge and on investigation conducted by their attorneys and, in support, state  
and allege as follows:

1 **I. NATURE OF THE ACTION**

2 1. Plaintiffs, individually and as a class representative for all similarly situated  
3 persons in the United States who have received automated text message calls to their cellular  
4 phones from an automatic telephone dialing system by Defendant or its agents, brings this  
5 action for violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*  
6 (“TCPA”), the Washington Automatic Dialing and Announcing Device Statute (“WADAD”),  
7 the Washington Consumer Protection Act (“CPA”), specifically RCW 80.36.390 (telephone  
8 solicitations), and for invasion of privacy by intrusion against Trend Capital and its present,  
9 former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or  
10 related entities.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has subject matter jurisdiction over Plaintiffs’ TCPA claim  
13 pursuant to 28 U.S.C. § 1331 because Plaintiffs’ TCPA claim arises under the laws of the  
14 United States, specifically 47 U.S.C. § 227 *et seq.* and its implementing regulations, 47  
15 C.F.R. § 64.1200 *et seq.*

16 3. This Court has personal jurisdiction over Trend Capital and venue is proper in  
17 this District because Defendant systematically and continuously conducts business in  
18 Washington State, maintains its principal place of business in Washington State, and a  
19 substantial part of the events giving rise to the claims asserted here occurred in this District.

20 **III. PARTIES**

21 4. Plaintiff Van Elzen is a natural person and is domiciled in, and is a citizen of,  
22 the State of Wisconsin.

23 5. Plaintiff Moore is a natural person and is domiciled in, and is a citizen of, the  
24 State of Minnesota.

25 6. Defendant Trend Capital is a corporation incorporated and existing under the  
26

1 laws of the State of Delaware whose primary corporate headquarters is located at 13115 NE  
2 4th Street, Suite 110, Vancouver, Washington 98684. Trend Capital does business  
3 throughout the United States, including in the State of Washington and this District.

4 **IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**  
5 **(TCPA), 47 U.S.C. § 227**

6 7. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C.  
7 § 227 (“TCPA”), in response to a growing number of consumer complaints regarding certain  
8 annoying and harassing telemarketing practices.

9 8. The TCPA regulates, among other things, the use of automated telephone  
10 equipment, or “autodialers.” Specifically, the plain language of Section 227(b)(1)(A)(iii)  
11 prohibits the use of autodialers to make any call to a wireless number in the absence of an  
12 emergency or the prior express consent of the called party.

13 9. According to findings by the Federal Communications Commission (“FCC”),  
14 the agency Congress vested with the authority to issue regulations implementing the TCPA,  
15 such calls are prohibited because, as Congress found, automated or prerecorded telephone  
16 calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls  
17 can be costly and inconvenient. The FCC also recognized that many wireless customers are  
18 charged for incoming calls whether they pay in advance or after the minutes are used.

19 10. The WADAD is based on the federal TCPA statute, and the federal analysis of  
20 TCPA provides guidance for interpreting WADAD.

21 **V. FACTUAL ALLEGATIONS**

22 **A. Bulk SMS Marketing**

23 11. In recent years, marketers who have felt stymied by federal laws limiting  
24 solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative  
25 technologies through which to send bulk messages cheaply.

26 12. Bulk text messaging, or SMS marketing, has emerged as a new and direct

1 method of communicating and soliciting consumer business. The term “Short Message  
2 Service,” or “SMS,” is a messaging system that allows cellular telephone subscribers to use  
3 their cellular telephones to send and receive short text messages, usually limited to 160  
4 characters. An SMS message is a text message call directed to a wireless device through the  
5 use of the telephone number assigned to the device.

6 13. When an SMS message call is successfully made, the recipient’s cell phone  
7 rings, alerting him or her that a call is being received. As cellular telephones are inherently  
8 mobile and are frequently carried on their owner’s person, calls to cellular telephones,  
9 including SMS messages, may be received by the called party virtually anywhere worldwide  
10 and instantaneously.

11 **B. Defendant Transmits Text Messages to Consumers Who Do Not Want**  
12 **Them**

13 14. Trend Capital is a list management and lead generation company, operating in  
14 a variety of markets, including payday lending.

15 15. Trend Capital offers several different products for affiliate marketing,  
16 including lead generation, pay-per-click advertising, and a text-messaging platform.

17 16. Trend Capital’s text messaging platform is known as “Vatimo” and is  
18 described by Defendant as having a “vast scale of messaging capability, high deliverability,  
19 and detailed reporting.”<sup>1</sup>

20 17. Trend Capital directly, or at the direction of its clients, sends text messages to  
21 consumer’s cellular phones.

22 18. In sending these text messages, Defendant took no steps to acquire the oral or  
23 written prior express consent of Plaintiffs or other cellphone users who received the  
24 unsolicited text messages.

25 \_\_\_\_\_  
26 <sup>1</sup> <http://trendcapital.com/projects>

1 19. Defendant made, or had made on its behalf, the same (or substantially the  
2 same) text message calls *en masse* to thousands of cellular telephone numbers throughout the  
3 United States.

4 20. In sending the text messages at issue in this Complaint, Defendant utilized an  
5 automatic telephone dialing system. Specifically, the hardware and software used by  
6 Defendant (or its agent(s)) has the capacity to store, produce, and dial random or sequential  
7 numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en*  
8 *masse*, in an automated fashion without human intervention. Defendant's automated dialing  
9 equipment includes features substantially similar to a predictive dialer inasmuch as it is  
10 capable of making numerous text message calls simultaneously (all without human  
11 intervention).

12 21. Defendant was and is aware that these above described text messages were  
13 and are being made without the prior express consent of the text message recipients.

14 C. **Defendant Transmits Text Messages to Consumers Who Have Expressly**  
15 **Opted-Out**

16 22. Defendant also sends unauthorized SMS text messages to cellular subscribers  
17 who have expressly "opted-out" or requested not to receive text messages. Even if any prior  
18 consent existed, Defendant is required to honor each stop-request as a termination of any  
19 prior consent. Accordingly, any SMS text message (other than a final one-time confirmation  
20 text message confirming the recipient's desire to not receive such messages) sent to a cellular  
21 subscriber after receiving an express stop request is done without prior express consent.

22 23. To help mobile marketers navigate regulatory compliance, the Mobile  
23 Marketing Association ("MMA") publishes specific guidelines based on accepted industry  
24 practices for all mobile marketers. Those guidelines include industry best practices for  
25 processing and honoring stop requests from consumers.

26 24. According to the MMA's October 2012 U.S. Consumer Best Practices for

1 Messaging, “[a] subscriber must be able to stop participating and receiving messages from  
2 any program by sending STOP to the short code used for that program. . . END, CANCEL,  
3 UNSUBSCRIBE or QUIT should also be opt-out key words for all programs; however  
4 content providers should feature the word STOP in their advertising and messaging. . . When  
5 sent, these words cancel the subscriber’s previous opt-in for messaging.” Further, “[t]he  
6 content provider must record and store all opt-out transactions.”

7 25. CTIA<sup>2</sup> similarly advises that “[s]hortcode programs must respond to, at a  
8 minimum, the universal keywords STOP, END, CANCEL, UNSUBSCRIBE, and QUIT . . .  
9 and, if the user is subscribed, by opting the user out of the program.” Further, “[r]ecurring  
10 programs must promote opt-out instructions at regular intervals in content or service  
11 messages, at least once per month,” and “[u]sers must be able to opt out at any time.” *See*  
12 CTIA Compliance Assurance Solution Mobile Commerce Compliance Handbook, Version  
13 1.2, effective August 1, 2013.

14 26. The FCC has similarly ruled that consumers have the ability to revoke their  
15 consent. Yet Defendant ignores these rules and accepted industry guidelines. Instead,  
16 Defendant makes it difficult for consumers to opt-out or unsubscribe to its SMS text  
17 messages by failing to timely honor such requests.

18 27. Despite receiving numerous express stop requests from cellular subscribers,  
19 including Plaintiff Moore, Defendant Trend Capital continues to send automated text  
20 messages to these subscribers, sometimes for months afterwards.

21 28. Defendant knows, or is reckless in not knowing, that its SMS text messages to  
22 these cellular subscribers are unauthorized. Reply message STOP requests are, by design,  
23

24 \_\_\_\_\_  
25 <sup>2</sup> The CTIA is an international non-profit organization that audits and enforces the rules surrounding carrier-  
26 based text messaging programs. Together, the MMA and the CTIA establish and publish guidelines setting forth  
accepted industry best practices for mobile marketing.

1 sent to Defendant's number, thereby directly informing Defendant that any subsequent  
2 messages are unauthorized. Ultimately, consumers are forced to bear the costs of receiving  
3 these unsolicited and unauthorized text messages.

4 **D. Websites Owned and Controlled by Defendant Trend Capital Holdings**

5 29. On information and belief, Defendant Trend Capital Holdings sends or has  
6 sent on its behalf through its affiliates, unsolicited text messages to consumers directing such  
7 consumers to complete payday loan applications on websites Defendant or its affiliates own  
8 or control such as Loanup1.com, Dev-Yosto.com, and IncLoans.com.

9 30. IncLoans.com is privately registered to hide the owner's identity presumably  
10 since the website is used to engage in unsolicited telemarketing that violates the Telephone  
11 Consumer Protection Act.

12 31. Dev-Yosto.com is an identical website to IncLoans.com, with the exact same  
13 homepage, images, links, including all of the exact same text on each page, and the ability to  
14 submit a payday loan 'application' through both websites.

15 32. On information and belief, Dev-Yosto.com stands for development site for the  
16 Yosto company. The whois registration for Dev-Yosto.com reveals that the website is  
17 registered to Denis Goncharov whose email is denis@yosto.com.

18 33. Yosto was located in Vancouver, WA and engaged in affiliate marketing  
19 within the payday loan industry.<sup>3</sup>

20 34. Yosto has since been dissolved according to its corporate records in Delaware.  
21 Many of the principals of Yosto reformed to create Trend Capital Holdings, Inc. For instance,  
22 Vlad Nester, the former CEO of Yosto, is now the CEO of Trend Capital Holdings, Inc.<sup>4</sup>

23  
24  
25 <sup>3</sup> See <https://www.facebook.com/Yostocom> ("Many of our affiliates in payday US noticed that it's become [sic]  
harder to generate Payday US traffic within the last two weeks. Is there something wrong?")

26 <sup>4</sup> <https://www.linkedin.com/in/vlad-nester-4b284867>

1 35. Trend Capital was formed in August 17, 2015 in Vancouver, Washington and  
2 is responsible for the loans-soliciting website Incloans.com. Trend Capital markets itself as a  
3 “leader in list management and lead generation. We offer high-conversion landing pages and  
4 generate a large volume of traffic. Our revolutionary platform allows us to run effective  
5 profitable campaigns.”<sup>5</sup> One of the platforms that Trend Capital runs is Vatimo, which it  
6 describes as “a unique and reliable SMS messaging and call tracking platform...it’s vast  
7 scale of messaging capability, high deliverability, and detailed reporting makes Vatimo an  
8 effective and highly utilized platform.”<sup>6</sup>

9 36. Loanup1.com, which is a site also promoted by or on behalf of Defendant  
10 Trend Capital, is also owned or controlled by Defendant Trend Capital.

11 37. Loanup.com was a site marketed by Yosto, the precursor company to  
12 Defendant Trend Capital. Yosto claimed, when promoting to affiliates who will drive traffic  
13 to its site, that “You can send traffic to the exclusive landing pages available through our  
14 network. The conversion rate on our promo sites can reach up to 60%.”<sup>7</sup> The posting goes on  
15 to describe loanup.com and includes an image of the site, which is a replica of the site of  
16 Loanup1.com.

17 38. Yosto last updated its affiliate offer promoting Loanup.com as recently as  
18 August 1, 2016 according to Odigger.com, a website forum that helps companies advertise  
19 and find affiliate offers. Yosto offered \$185 for each affiliate that sent a lead through  
20 Loanup.com.

21  
22  
23 <sup>5</sup> <https://www.linkedin.com/company/trend-capital-holdings-inc>

24 <sup>6</sup> <http://trendcapital.com/projects>

25 <sup>7</sup> <http://www.warriorforum.com/affiliate-program-database/858716-yost-advanced-affiliate-network-up-155-per-lead-weekly-payments.html>  
26

1 39. The site Loanup.com, as of March 15, 2015,<sup>8</sup> and the current Loanup1.com  
2 website are mirror websites of one another sharing the same design and text.

3 40. Unfortunately for Plaintiffs and other members of the Classes, Defendant send  
4 out text messages to consumers who have not consented to receive them.

5 41. By making the text message calls at issue in this Complaint, Defendant caused  
6 Plaintiffs and the members of the Classes actual harm and cognizable legal injury. This  
7 includes the aggravation and nuisance and invasions of privacy that result from the receipt of  
8 such text messages, in addition to a loss of value realized for the monies consumers paid to  
9 their wireless carriers for the receipt of such calls. Furthermore, the calls interfered with  
10 Plaintiffs' and the other Class members' use and enjoyment of their cellphones, including the  
11 related data, software, and hardware components. Defendant also caused substantial injury to  
12 their phones by causing wear and tear on their property, consuming battery life, and  
13 appropriating cellular minutes.

14 **E. Plaintiff Van Elzen's Experience with Defendant**

15 42. On June 10, 2011, Plaintiff Van Elzen registered his cellular phone number on  
16 the National Do Not Call registry, a list that all telemarketers must adhere to, to avoid  
17 unsolicited calls and text messages. Beginning in May 2016, Plaintiff Van Elzen began to  
18 receive unsolicited text messages on his cell phone from a variety of phone numbers. The  
19 telemarketer was texting him in order to solicit Plaintiff Van Elzen to apply for a so-called  
20 payday loan.

21 43. Plaintiff Van Elzen received the first text message from Defendant on May  
22 23, 2016 from 304-370-6092 and the link in the text message lead Plaintiff to  
23 <http://incloans.com>.

24  
25 \_\_\_\_\_  
26 <sup>8</sup> <http://web.archive.org/web/20150315012440/https://loanup.com/>

1 44. Plaintiff Van Elzen received a second text message from Defendant on June 1,  
2 2016 stating, “Due to changes we approve you now for sure and full advance  
3 <http://bit.ly/1WuSNqX>.” A hyperlink in that text message also lead Plaintiff to  
4 <http://incloans.com>.

5 45. Plaintiff Van Elzen received a third text message from Defendant on June 2,  
6 2016 stating, “Morning Excited you can be finalized for advance last step right away  
7 go <http://1oos.net/w416> /Text stop to 2133547369.” The hyperlink in that text message also  
8 lead to <http://incloans.com>.

9 46. Plaintiff Van Elzen received a fourth text message from Defendant on June  
10 20, 2016 stating, “Latest News Excited you can be ap.proved for advance last step now  
11 go <http://1sso.net/w2119> /Text stop to 2133547369.” The hyperlink in that text message also  
12 lead to <http://incloans.com>.

13 47. Plaintiff Van Elzen received a fifth text message from Defendant on June 24,  
14 2016 stating, “We approve you now for sure advance <http://bit.ly/293R4Uy>.” The hyperlink  
15 in that text message also lead to <http://incloans.com>.

16 48. At no time did Plaintiff Van Elzen consent to the receipt of text message calls  
17 from Defendant, let alone provide prior oral or written express consent to Defendant.

18 49. Plaintiff Van Elzen received unsolicited telemarketing text messages on  
19 behalf of Trend Capital Holdings, Inc. and its affiliates for 2 months.

20 50. Plaintiff Van Elzen received a total of 5 unsolicited text messages from  
21 Defendant, each of which attempted to telemarket a payday loan.

22 51. By making unauthorized text message calls as alleged herein, Defendant has  
23 caused consumers actual harm, including aggravation and annoyance and interference with  
24 the use and enjoyment of their cellphones. In the present case, a consumer could be subjected  
25 to many unsolicited text messages as the Defendant does not provide instructions or a  
26

1 mechanism for opting out.

2 52. Unfortunately for Plaintiffs and other members of the Classes, Defendant send  
3 out text messages to consumers who have not consented to receive them.

4 53. To redress these concrete and particularized harms, Plaintiff Van Elzen, on  
5 behalf of himself and a class of similarly situated individuals, bring suit under the Telephone  
6 Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits  
7 unsolicited voice and text calls to cell phones.

8 54. On behalf of the Classes, Plaintiff Van Elzen seeks an injunction requiring  
9 Defendant to cease all wireless spam activities and an award of statutory damages to the class  
10 members, together with costs and reasonable attorneys’ fees.

11 **F. Plaintiff Moore’s Experience with Defendant**

12 55. On November 6, 2012 Plaintiff Moore registered her cellular phone number  
13 on the National Do Not Call registry to avoid unsolicited calls from telemarketers. Beginning  
14 in approximately January 2016, Plaintiff Moore began to receive unsolicited text messages  
15 on her cell phone from a variety of phone numbers. The telemarketer was texting her in order  
16 to solicit Plaintiff Moore to apply for a so-called payday loan.

17 56. Plaintiff Moore received the first text message on her new phone from  
18 Defendant on May 2, 2016 at 12:57 PM stating, “You are now eligible to request more funds  
19 – up to 1K. Login at <http://bit.ly/1rr6bza>. Reply STOP to Quit.” The text was sent by 302-  
20 549-4377 and the link in the text message leads to <http://incloans.com> when it is clicked.  
21 Plaintiff Moore replied “STOP” to put an end to the text messages, but she received no  
22 confirmation of her opt-out.

23 57. Despite her opt-out request, Plaintiff Moore received a second text message  
24 on her new phone from Defendant on May 16, 2016 at 1:18 PM stating, “More funds  
25 available. Login <http://bit.ly/1WAaQw5> to request. Txt CANCEL to QUIT.” The text was  
26

1 sent by 423-617-0377 and the link in the text message leads to <http://incloans.com> when it is  
2 clicked.

3 58. Plaintiff Moore received a third text message on her new phone from  
4 Defendant on May 23, 2016 at 11:27 AM stating, “Your account is active. You may login  
5 and apply for funds <http://bit.ly/27PnoDb> Txt CANCEL to STOP.” The text was sent by 423-  
6 617-0729 and the link in the text message leads to <http://touchpointloans.com>. Plaintiff  
7 Moore replied “Cancel” in an effort to opt-out of the text messages.

8 59. Despite her second opt-out request, Plaintiff Moore received a fourth text  
9 message on her phone from Defendant on May 31, 2016 at 12:34 PM stating, “You are  
10 eligible to apply for funds by completing a quick and simple form online. Submit your  
11 request today <http://bit.ly/1WWhmwL>. Reply CANCEL to CANCEL.” The text was sent by  
12 530-447-0451 and the link in the text message leads to <http://touchpointloans.com> when  
13 clicked.

14 60. Plaintiff Moore received a fifth text message on her new phone from  
15 Defendant on July 18, 2016 at 12:08 PM stating, “Submit an application for additional funds.  
16 The form is located in your account at <http://loanpct.co/4a4ee>. Reply STOP to CANCEL.”  
17 The text was sent from phone number 844-238-7071 and the link in the text message leads to  
18 <https://loanspockets.com/> when clicked. Plaintiff Moore replied Stop to cancel as instructed.  
19 This time she received an opt-out confirmation.

20 61. Loanspockets.com is a replica of the site Loanup1.com controlled by  
21 Defendant Trend Capital Holdings.

22 62. Yosto advertised leads to LoanPocket.com via the affiliate network on  
23 Odigger.com.<sup>9</sup>

24  
25  
26 <sup>9</sup> <http://odigger.com/affiliate-offer/loanpocket-com-payday-loans-usa/>

1 63. Touchpointloans.com is a replica of Loanup1.com.

2 64. At no time did Plaintiff Moore give prior express consent to the receipt of text  
3 message calls from Defendant, let alone provide prior oral or written express consent to  
4 Defendant.

5 65. Plaintiff Moore received unsolicited telemarketing text messages on behalf of  
6 Trend Capital Holdings, Inc. and its affiliates for 6 months.

7 66. Plaintiff Moore received a total of at least 5 unsolicited text messages, all  
8 relating to obtaining a payday loan.

9 67. By making unauthorized text message calls as alleged herein, Defendant has  
10 caused consumers actual harm. In the present case, a consumer could be subjected to many  
11 unsolicited text messages and interference with the use and enjoyment of their cellphones.

12 68. To redress these injuries, Plaintiff Moore, on behalf of herself and a class of  
13 similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47  
14 U.S.C. § 227, *et seq.* (“47 U.S.C. § 227”), which prohibits unsolicited voice and text calls to  
15 cell phones.

16 69. On behalf of the Classes, Plaintiff Moore seeks an injunction requiring  
17 Defendant to cease all wireless spam activities and an award of statutory damages to the class  
18 members, together with costs and reasonable attorneys’ fees.

19 **VI. CLASS ACTION ALLEGATIONS**

20 70. Plaintiffs bring this action individually and on behalf of all other persons  
21 similarly situated (“Class Members”).

22 71. Class Definition. Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs  
23 bring this action as a class action on behalf of the Class of persons defined as follows:

24 **Autodialed No Consent Class:** All persons in the United States who in the  
25 four years preceding this Complaint up to the date notice is disseminated to  
26 the Class: (1) Defendant (or a third person acting on behalf of Defendant) sent  
text messages, (2) to the person’s cellular telephone number, and (3) for

1 whom Defendant claims it obtained prior express consent in the same manner  
2 as Defendant claims it supposedly obtained prior express consent to send  
automated text messages to Plaintiffs.

3 **DNC No Consent Class**: All persons in the United States who in the four  
4 years preceding this Complaint up to the date notice is disseminated to the  
5 Class (1) Defendant (or a third person acting on behalf of Defendant) made a  
6 text message call on his/her cellphone, (2) more than one time within any 12-  
7 month period, (3) where the cellphone number had been listed on the National  
8 Do Not Call Registry for at least thirty days, (4) for the purpose of selling  
Defendant’s products and services, and (5) for whom Defendant claims it  
obtained prior express consent in the same manner as Defendant claims it  
obtained prior express consent to call the Plaintiff.

9 **Replied Stop Class**: All persons in the United States who from the last four  
10 years to the present (1) received on their cellphone at least one text message  
11 from Defendant (or a third person acting on behalf of Defendant) promoting a  
12 business or service, (2) replied to the text message with an instruction for  
13 Defendant to no longer send messages using the terms STOP, CANCEL, END  
14 or similar terms, and (3) who thereafter received at least one additional text  
message to their same cellphone number beyond a message simply confirming  
the opt out, and (4) who did not reauthorize Defendant to send them text  
messages after they opted out.

15 72. The following people are excluded from the Classes: (1) any Judge or  
16 Magistrate presiding over this action and members of their families; (2) Defendant,  
17 Defendant’s subsidiaries, parents, successors, predecessors, and any entity in which the  
18 Defendant or its parents have a controlling interest and its current or former employees,  
19 officers and directors; (3) persons who properly execute and file a timely request for  
20 exclusion from the Classes; (4) persons whose claims in this matter have been finally  
21 adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s  
22 counsel; and (6) the legal representatives, successors, and assigns of any such excluded  
23 persons. Plaintiffs anticipate the need to amend the Class Definition following class  
24 discovery, including discovery revealing the manner by which Defendant claims it obtained  
25 prior express consent to send text messages to the Plaintiffs.  
26

1           73.     **Numerosity:** The exact number of members within the Classes is unknown  
2 and not available to Plaintiffs at this time, but it is clear that individual joinder is  
3 impracticable. On information and belief, Defendant has sent text messages to hundreds or  
4 thousands of consumers who fall into the definition of the Classes. Members of the Classes  
5 can be identified through Defendant’s records.

6           74.     **Typicality:** Plaintiffs’ claims are typical of the claims of other members of  
7 the Classes in that Plaintiffs and the members of the Classes sustained damages arising out  
8 of Defendant’s uniform wrongful conduct. Plaintiffs are members of the Classes defined  
9 herein, and if Plaintiffs are able to recover for the claims set forth in this Complaint then the  
10 other Class Members will have a right to recover as well.

11           75.     **Adequate Representation:** Plaintiffs will fairly and adequately represent and  
12 protect the interests of the Classes and have retained counsel competent and experienced in  
13 complex class actions, including class actions under the TCPA and related statutes. Plaintiffs  
14 have no conflicts with or interests antagonistic to those of the Classes, and Defendant has no  
15 defenses unique to Plaintiffs.

16           76.     **Commonality and Predominance:** There are many questions of law and fact  
17 common to the claims of Plaintiffs and the Classes, and those questions predominate over  
18 any questions that may affect individual members of the Classes. Common questions for the  
19 Classes include, but are not necessarily limited to the following:

- 20                   (a)     Whether Defendant’s conduct constitutes a violation of the TCPA;  
21                   (b)     Whether Defendant utilized an automatic telephone dialing system to  
22                               send text messages to members of the Classes;  
23                   (c)     Whether members of the Classes are entitled to statutory and treble  
24                               damages based on the willfulness of Defendant’s conduct;

- 1 (d) Whether Defendant obtained prior express written consent to contact
- 2 any class members;
- 3 (e) Whether Defendant sent text messages to persons who had replied
- 4 STOP, END, CANCEL, or with similar terms;
- 5 (f) Whether Defendant sent multiple text messages to cellphone users
- 6 whose numbers were registered on the Do Not Call list;
- 7 (g) Whether Trend Capital’s messages constitute telemarketing or were
- 8 dual purpose messages, and
- 9 (h) To the extent Defendant’s conduct does not constitute telemarketing,
- 10 whether Defendant obtained prior express oral consent to contact any
- 11 class members.

12 77. **Superiority:** This case is also appropriate for class certification because class  
13 proceedings are superior to all other available methods for the fair and efficient adjudication  
14 of this controversy. Joinder of all parties is impracticable, and the damages suffered by the  
15 individual members of the Classes will likely be relatively small, especially given the burden  
16 and expense of individual prosecution of the complex litigation necessitated by Defendant’s  
17 actions. Thus, it would be virtually impossible for the individual members of the Classes to  
18 obtain effective relief from Defendant’s misconduct. Even if members of the Classes could  
19 sustain such individual litigation, it would still not be preferable to a class action, because  
20 individual litigation would increase the delay and expense to all parties due to the complex  
21 legal and factual controversies presented in this Complaint. By contrast, a class action  
22 presents far fewer management difficulties and provides the benefits of single adjudication,  
23 economy of scale, and comprehensive supervision by a single Court. Economies of time,  
24 effort and expense will be fostered and uniformity of decisions ensured.

1 **FIRST CAUSE OF ACTION**  
2 **Telephone Consumer Protection Act**  
3 **(Violation of 47 U.S.C. § 227)**  
4 **(On Behalf of Plaintiffs Van Elzen and Moore and the Autodialed No Consent Class)**

5 78. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
6 forth herein.

7 79. Defendant and/or its agent(s) transmitted unsolicited text message calls to  
8 cellular telephone numbers belonging to Plaintiffs and the other members of the Autodialed  
9 No Consent Class using equipment that, upon information and belief, had the capacity to  
10 store or produce telephone numbers to be called, using a random or sequential number  
11 generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en*  
12 *masse*, without human intervention. The telephone dialing equipment utilized by Defendant  
13 and/or its agent(s), which is substantially similar to a predictive dialer, dialed numbers from  
14 a list, or dialed numbers from a database of telephone numbers, in an automatic and  
15 systematic manner.

16 80. These text calls were made *en masse* and without the prior express written or  
17 oral consent of the Plaintiffs and the other members of the Autodialed No Consent Class to  
18 receive such wireless spam.

19 81. To the extent written prior express consent was required, Defendant failed to  
20 obtain prior express written consent that disclosed to the consumer that agreeing to receive  
21 text messages was not a condition of purchase or use of any goods or service or that the  
22 consumer was agreeing to receive calls with the use of an ATDS or similar technology.

23 82. To the extent Defendant's agent(s) sent the text messages at issue,  
24 Defendant's agent acted with actual or apparent authority and/or in accordance with a  
25 contract between Defendant and its agent(s). Defendant's agents acted under Defendant's  
26 control and for Defendant's benefit and/or with Defendant's knowledge and approval.  
Defendant controlled its agents and knew about, and received the benefits of, the agent's text

1 messaging activities. Defendant ratified the agent's conduct with respect to the transmission  
2 of such text messages.

3 83. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result  
4 of Defendant's conduct, Plaintiffs and the other members of the Autodialed No Consent  
5 Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00 in damages for  
6 each violation of such act.

7 84. In the event that the Court determines that Defendant's conduct was willful  
8 and knowing, it may, under section 227(b)(3)(C), treble the amount of statutory damages  
9 recoverable by Plaintiffs and the other members of the Autodialed No Consent Class.

10 **SECOND CAUSE OF ACTION**  
11 **Telephone Consumer Protection Act**  
12 **(Violation of 47 U.S.C. § 227)**  
13 **(On Behalf of Plaintiffs Van Elzen and Moore and the DNC No Consent Class)**

14 85. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
15 forth herein.

16 86. Defendant and/or its agent transmitted unsolicited text message calls to  
17 cellular telephone numbers belonging to Plaintiffs Van Elzen and Moore and the other  
18 members of the DNC No Consent Class using equipment that, upon information and belief,  
19 had the capacity to store or produce telephone numbers to be called, using a random or  
20 sequential number generator, and/or receive and store lists of phone numbers, and to dial  
21 such numbers, *en masse*, without human intervention. The telephone dialing equipment  
22 utilized by Defendant and/or its agent, which is substantially similar to a predictive dialer,  
23 dialed numbers from a list, or dialed numbers from a database of telephone numbers, in an  
24 automatic and systematic manner.

25 87. These text calls were made *en masse* and without the prior express consent of  
26 the Plaintiffs Van Elzen and Moore and the other members of the DNC No Consent Class to

1 receive such wireless spam.

2 88. Plaintiffs and the Class Members had registered their telephone numbers on  
3 the Do Not Call registry for at least 30 days yet each received more than one text message  
4 advertisement within a 12-month period from or on behalf of Defendant.

5 89. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result  
6 of Defendant’s conduct, Plaintiffs Van Elzen and Moore and the other members of the DNC  
7 No Consent Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00 in  
8 damages for each violation of such act.

9 90. In the event that the Court determines that Defendant’s conduct was willful  
10 and knowing, it may, under section 227(b)(3)(C), treble the amount of statutory damages  
11 recoverable by Plaintiffs Van Elzen and Moore and the other members of the DNC No  
12 Consent Class.

13 **THIRD CAUSE OF ACTION**  
14 **Telephone Consumer Protection Act**  
15 **(Violation of 47 U.S.C. § 227)**  
16 **(On Behalf of Plaintiff Moore and the Replied Stop Class)**

17 91. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
18 forth herein.

19 92. Defendant and/or its agent transmitted unsolicited text message calls to  
20 cellular telephone numbers belonging to Plaintiff Moore and the other members of the  
21 Replied Stop Class using equipment that, on information and belief, had the capacity to store  
22 or produce telephone numbers to be called, using a random or sequential number generator,  
23 and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*, without  
24 human intervention.

25 93. The telephone dialing equipment utilized by Defendant and/or their agent,  
26 which is substantially similar to a predictive dialer, dialed numbers from a list, or dialed

1 numbers form a database of telephone numbers, in an automatic and systematic manner.

2 94. These text calls were made *en masse* and without the consent of the Plaintiff  
3 Moore and the other members of the Replied Stop Class to receive such wireless spam.  
4 Indeed, any prior express consent had been revoked by each class member since they each  
5 had responded with the common SMS codes to opt-out of further communications, such as  
6 “STOP,” “REMOVE,” “OPT OUT,” “END,” “CANCEL,” or similar terms.

7 95. The text messages to Plaintiff Moore and the Replied Stop Class were made  
8 after any consent had been expressly revoked by responding with an opt-out request, such as  
9 “STOP.” This alone violates the TCPA.

10 96. Based on such conduct, Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii).

11 97. As a result of such conduct, Plaintiff Moore and the other members of the  
12 Replied Stop Class are each entitled to, under section 227(b)(3)(B), a minimum of \$500.00  
13 in damages for each violation of such act.

14 98. Additionally, because the text messages steadily continue despite multiple  
15 requests that they STOP, the violations are capable of repetition, even if Defendant was to  
16 temporarily place them on hold.

17 **FOURTH CAUSE OF ACTION**  
18 **(Violations of Washington Automatic Dialing and Announcing Device Statute,**  
19 **RCW 80.36.400)**

20 98. Plaintiffs incorporate by reference the foregoing allegations as if fully set  
21 forth herein.

22 99. At all times material hereto, Defendant used an automatic dialing and  
23 announcing device (“ADAD”) as defined in RCW 80.36.400(1)(a).

24 100. Defendant sent the text messages, which were commercial solicitations  
25 made for the purpose of encouraging Plaintiffs and the Class Members to purchase  
26 Defendants goods and services, namely its payday loans, from Washington State.

**FIFTH CAUSE OF ACTION  
(Violation of the Washington Consumer Protection Act, RCW 19.86)**

101. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

102. Under RCW 80.36.400(3), Defendant’s violation of RCW 80.36.400 constitutes a violation of the Washington State Consumer Protection Act, RCW 19.86, *et seq.*

103. The text messages themselves, or the decision to transmit them, were made in and/or emanated from Washington State.

104. As a direct result of Defendant’s conduct, Plaintiffs and Class members suffered damages in an amount to be proven at trial, and is additionally entitled to treble damages, civil penalties, and costs and attorneys’ fees as provided by RCW 19.86.

**SIXTH CAUSE OF ACTION  
(Invasion of Privacy by Intrusion under Washington Law)**

105. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

106. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of invasion of privacy by intrusion into Class members’ solitude, seclusion, or private affairs under Washington law.

107. As a direct result of Defendant’s intrusions of privacy, Plaintiffs and members of the Class are each entitled to damages for each and every invasion of privacy by intrusion.

**DEMAND FOR JURY TRIAL**

Plaintiffs demand a jury trial.

**REQUEST FOR RELIEF**

**WHEREFORE**, Plaintiffs Dave Van Elzen and Aubrey Moore, on behalf of themselves and the classes, pray for the following relief:

1. An order certifying this case as a class action on behalf of the Classes as defined above; appointing Plaintiffs Van Elzen and Moore as the representatives of the Classes and appointing their attorneys’ as Class Counsel;
2. An award of actual and statutory damages to be placed in a common fund for the benefit of the Class Members;
3. An injunction requiring Defendant to cease all wireless spam activities, and otherwise protecting the interests of the Class;
4. A declaration that Defendant used an ATDS under the TCPA and failed to honor opt out requests;
5. An award of reasonable attorneys’ fees and costs from the common fund; and
6. Such further and other relief the Court deems reasonable and just.

DATED this 9th day of September, 2016.

THATCHER, PLLC

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*Counsel for Plaintiffs and the Putative Class*

*\*pro hac vice* admission to be filed

# EXHIBIT C

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9 Attorney for Plaintiffs and the alleged Classes  
10 *Additional attorneys for Plaintiffs on signature page*

11 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
13 **SAN FRANCISCO DIVISION**

14 DAVID VAN ELZEN and RONALD  
15 RODRIGUEZ, individually and on  
16 behalf of all others similarly situated,

17 Plaintiffs,

18 v.

19 TAX GROUP CENTER, INC., a  
20 California corporation,

21 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

22 **CLASS ACTION COMPLAINT**

23 Plaintiff David Van Elzen (“Van Elzen”) and Plaintiff Ronald Rodriguez  
24 (“Rodriguez”) (collectively “Plaintiffs”) bring this Class Action Complaint and  
25 Demand for Jury Trial (“Complaint”) against Defendant Tax Group Center, Inc.  
26 (“Tax Group” or “Defendant”) to: (1) stop Defendant’s practice of placing calls  
27 using an automatic telephone dialing system (“ATDS”) and/or using an artificial or  
28 prerecorded voice to the cellular telephones of consumers nationwide without their

1 prior express consent, (2) stop unsolicited calls to consumers who are registered on  
2 the Do Not Call Registry, (3) enjoin Defendant from continuing to place pre-  
3 recorded telephone calls to consumers who did not provide their prior written  
4 express consent to receive them or who are registered on the do not call registry,  
5 and (4) obtain redress for all persons injured by its conduct. Plaintiffs, for their  
6 Complaint, alleges as follows upon personal knowledge as to themselves and their  
7 own acts and experiences, and, as to all other matters, upon information and belief,  
8 including investigation conducted by their attorneys.

9 **PARTIES**

10 1. Plaintiff Dave Van Elzen is a natural person and a resident of the State  
11 of Wisconsin, in the City of Appleton, Outagamie County.

12 2. Plaintiff Ronald Rodriguez is a natural person and a resident of the  
13 State of Texas, in the City Lytle, Bexar County.

14 3. Defendant Tax Group Center, Inc. is a company incorporated and  
15 existing under the laws of the State of California. Its headquarters is located One  
16 Market, Spear Tower, 36<sup>th</sup> floor, San Francisco, California 94105. Defendant does  
17 business throughout the United States, including in the State of California and in  
18 this District.<sup>1</sup>

19 **JURISDICTION & VENUE**

20 4. This Court has federal subject matter jurisdiction under 28 U.S.C.  
21 §1331 as the action arises under the Telephone Consumer Protection Act, 47 U.S.C  
22 § 227 *et seq.*, which is a Federal statute.

23 5. The Court has personal jurisdiction over Defendant and venue is  
24 proper in this District because Defendant is registered to do business in the State of  
25 California, is headquartered in this District, and regularly conducts business in the  
26

27 <sup>1</sup> Defendant filed a Statement of Information with the California Secretary of State on October 29,  
28 2015.

1 State of California and in this District.

2 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because  
3 Defendant resides in this District, conducts a significant amount of business within  
4 this District, and because the wrongful conduct giving rise to this case occurred in,  
5 was directed to, and/or emanated from this District.

6  
7 **COMMON ALLEGATIONS OF FACT**

8  
9 7. Defendant Tax Group is a company that specializes in providing debt-  
10 relief solutions for consumers who are significantly indebted to the Internal  
11 Revenue Service (IRS).<sup>2</sup>

12 8. Unfortunately for consumers, Defendant casts its marketing net too  
13 wide. That is, in an attempt to promote Defendant’s IRS debt-relief services,  
14 Defendant conducted (and continues to conduct) a wide-scale telemarketing  
15 campaign that features the making of repeated unsolicited prerecorded telephone  
16 calls to consumers’ cellular telephones without consent, and even those who have  
17 registered their number on the National Do Not Call Registry - all in violation of  
18 the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

19 9. As explained by the Federal Communications Commission (“FCC”) in  
20 its 2012 order, the TCPA requires “*prior express written consent* for all autodialed  
21 or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the*  
22 *Matter of Rules and Regulations Implementing the Telephone Consumer Protection*  
23 *Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

24 10. Yet in violation of this rule, Defendant fails to obtain any prior express  
25 written consent to make these autodialed calls using a prerecorded voice to cellular  
26 telephone numbers.

27 \_\_\_\_\_  
28 <sup>2</sup> <http://www.linkedin.com/company/tax-group-center-inc->

1 11. In an attempt to solicit its services, namely its IRS debt-relief services,  
2 Defendant utilizes an “automatic telephone dialing system” (“ATDS”) to contact or  
3 attempt to contact prospective consumers.

4 12. Defendant’s employees make hundreds of calls per day, a signal that  
5 an autodialer is being used. As noted by Defendant in an advertisement for  
6 employment:

7 Daily responsibilities include, but not limited to: Working Monday --  
8 Friday 40 hours a week, *make around 125 outbound calls daily*, daily  
9 call log report.<sup>3</sup> (Emphasis added - See the screenshot produced  
10 below).

11 **Dialer/Sales**

Tax Group Center - Calabasas, CA

\$12 an hour

We are a rapidly growing company that is seeking 1-2 qualified people to make outbound calls for our sales team. and we are not a call center. This is a Full time hourly pay position with potential to grow.

13 What we desire in a candidate is: self motivation, a customer service attitude, integrity, a willingness to learn, and exceptional people skills. Applicant must be familiar with basic user end of MS office (email, word, excel)

14 Daily responsibilities include, but not limited to: Working Monday -- Friday 40 hours a week, make around 125 outbound calls daily, daily call log report.

15  
16 13. Furthermore, as evidenced by the screenshot produced below, a former  
17 employee for Defendant reveals that he or she was required to place approximately  
18 250 calls per day and keep a daily log report.<sup>4</sup>

19 **Enrolled Agent / Resolution Manager**

Tax Group Center, Inc.

February 2011 – February 2014 (3 years 1 month) | Calabasas, CA

20 -Dialer (250+ dials/day)

21 -Case Assistant (Preparing forms, client phone calls, case management)

22 -Enrolled Agent/Power of Attorney (400+case management for IRS/State tax resolution programs)

-- 99 client taxpayers with OIC's accepted in 2013 for savings of over 3 million dollars.

23 -Resolution Manager (observe all employee productivity and efficiency, complex account resolution)

24 14. Defendant calls consumers on their cellular telephones using an ATDS  
25 without their prior written express consent in violation of the TCPA.

26  
27 <sup>3</sup> <http://www.indeed.com/job/dialersales-dd0f4da87f9125a4>

28 <sup>4</sup> <http://www.linkedin.com/in/jonathan-mccormick-91106768>

1 15. Defendant fails to obtain any prior express written consent to make the  
2 prerecorded calls described herein to cellular telephone numbers.

3 16. Consumer complaints about Defendant’s invasive and repetitive calls  
4 are legion. As a sample, consumers have complained as follows:

- 5 • “Called this afternoon on my cell I am on the DNC and use my  
6 landline for IRS d also ng which I am D along with now from my  
7 sister who passed away jerks not the IRS nothing to do with the  
8 IRS.”<sup>5</sup>
- 9 • “I pressed 3 to stop the calls but they keep calling. Sometimes the#  
10 changes by one digit, but it’s still them. I updated my # on the do  
11 not call list last month and it seems like they call even more than  
12 before.”<sup>6</sup>
- 13 • “The Robocall said that I qualify for IRS Tax relief program.  
14 Scaaammm alert”<sup>7</sup>
- 15 • “Urgent message! Our records indicate you are eligible for IRS Tax  
16 Debt Relief!! - BLOCKED”<sup>8</sup>
- 17 • “Woke us up at 0730 with their robo-promise to help us with our  
18 taxes. We’ll keep getting these criminal calls until the criminals in  
19 Wash. DC put some jail time and manpower behind nailing the  
20 phone crooks. Probably won’t happen in our lifetimes ...”<sup>9</sup>

21 17. In placing the calls that form the basis of this Complaint, Defendant, or  
22 its affiliated entities, utilized an ATDS in violation of the TCPA. Specifically, the  
23 hardware and software used by Defendant has the capacity to generate and store  
24 random numbers, and/or receive and store lists of telephone numbers, and to dial

25 <sup>5</sup> <http://800notes.com/Phone.aspx/1-203-242-8296>

26 <sup>6</sup> <http://800notes.com/Phone.aspx/1-203-242-8296/2>

27 <sup>7</sup> *Id.*

28 <sup>8</sup> <http://800notes.com/Phone.aspx/1-203-242-8296/2>

<sup>9</sup> *Id.*

1 such numbers, *en masse*, in an automated fashion without human intervention.  
2 Defendant's automated dialing equipment also is, or includes features substantially  
3 similar to, a predictive dialer, meaning that it is capable of making numerous phone  
4 calls simultaneously and automatically connecting answered calls to then available  
5 callers and disconnecting the rest (all without human intervention).

6 18. Telemarketers who wish to avoid calling numbers listed on the  
7 National Do Not Call Registry can easily and inexpensively do so by "scrubbing"  
8 their call lists against the National Do Not Call Registry database. The scrubbing  
9 process identifies those numbers on the National Do Not Call Registry, allowing  
10 telemarketers to remove those numbers and ensure that no calls are placed to  
11 consumers who opt-out of telemarketing calls.

12 19. To avoid violating the TCPA by calling registered numbers,  
13 telemarketers must scrub their call lists against the Registry at least once every  
14 thirty-one days. *See* 16 C.F.R. § 310.4(b)(3)(iv).

15 20. There are numerous third party services that will additionally scrub  
16 call lists for a telemarketer to segment out landline and cellular telephone numbers,  
17 since the consent standards differ depending on what type of phone a telemarketer  
18 is calling.<sup>10</sup> Indeed, one such service notes that it can:

19 Instantly verify whether a specific phone number is wireless or  
20 wireline to learn if TCPA regulations apply – and verify the identity of  
21 the current subscriber to determine if they are the same party who  
22 provided you with consent.<sup>11</sup>

23 21. When placing its calls to consumers, Defendant failed to get the prior  
24 express consent required by the TCPA of cellular telephone owners/users as  
25 required by the TCPA to make such calls.

26 22. Furthermore, Defendant calls consumers who have no "established

27 <sup>10</sup> See e.g. <http://www.dncsolution.com/do-not-call.asp>; <http://www.donotcallprotection.com/do-not-call-compliance-solutions-1>; [http://www.mindwav.com/tcpa\\_compliance\\_solution.asp](http://www.mindwav.com/tcpa_compliance_solution.asp);

28 <sup>11</sup> <https://www.neustar.biz/services/tcpa-compliance>

1 business relationship” with Defendant, and Defendant failed to scrub its lists to  
2 ensure that it was not placing calls to person’s whose numbers were registered on  
3 the Do Not Call Registry. As a result, it called persons whose numbers were  
4 registered on the Do Not Call Registry.

5 23. Finally, even when consumers try to opt out of future calls by  
6 requesting to never be called again, Defendant continues to call them.

7 24. Defendant knowingly made (and continues to make) telemarketing  
8 calls to cellular telephones without the prior express consent of the call recipients.  
9 As such, Defendant not only invaded the personal privacy of Plaintiffs and other  
10 members of the putative Classes but also intentionally and repeatedly violated the  
11 TCPA.

12 **FACTS SPECIFIC TO PLAINTIFF VAN ELZEN**

13 25. On June 10, 2011, Plaintiff Van Elzen registered his cellular telephone  
14 number on the National Do Not Call Registry to avoid receiving unsolicited  
15 telemarketing calls on his cellular telephone.

16 26. More than 30 days after Plaintiff Van Elzen registered his cellular  
17 telephone number on the National Do Not Call Registry, Tax Group, either directly,  
18 or through its affiliates and agents, made a series of unsolicited telemarketing calls  
19 to Plaintiff Van Elzen. The calls came to Plaintiff Van Elzen on his cellular  
20 telephone using an artificial or prerecorded voice. The calls began in or around  
21 October 2016.

22 27. Tax Group utilized telephone number 203-242-8296 to place its  
23 unsolicited prerecorded calls to Plaintiff Van Elzen.

24 28. All of the prerecorded telephone calls from Tax Group were made to  
25 solicit Plaintiff Van Elzen to obtain its services in resolving tax-related problems.

26 29. On at least one occasion, when Plaintiff Van Elzen answered one of  
27 Tax Group’s calls, a prerecorded voice explained to him that the call was in  
28

1 reference to a tax-relief program. He was instructed to press #1 to speak to Tax  
2 Group's representative and to press #3 to be removed from Tax Group's list.

3 30. At no time did Plaintiff Van Elzen consent to the receipt of pre-  
4 recorded calls to his cellular telephone from Tax Group, let alone provide prior oral  
5 or written express consent to Tax Group for such calls to be placed.

6 31. By making unauthorized prerecorded telephone calls as alleged herein,  
7 Tax Group has caused consumers actual harm. In the present case, a consumer  
8 could be subjected to multiple, repeating unsolicited pre-recorded calls regardless  
9 of whether consumers consented to receiving them or not. Tax Group caused Van  
10 Elzen and the members of the Classes actual harm and cognizable legal injury. This  
11 includes the aggravation and nuisance and invasions of privacy that result from the  
12 receipt of such calls and a loss of value realized for the monies consumers paid to  
13 their wireless carriers for the receipt of such calls. Furthermore, the calls interfered  
14 with Van Elzen's and the other Class members' use and enjoyment of their  
15 cellphones, including the related data, software, and hardware components. Tax  
16 Group also caused substantial injury to their phones by causing wear and tear on  
17 their property, consuming battery life, and in certain cases appropriating cellular  
18 minutes, in addition to the invasion of privacy and nuisance of having to answer  
19 such unsolicited calls.

20 32. To redress these injuries, Plaintiff brings suit under the Telephone  
21 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited  
22 autodialed calls to cellular telephones.

23 33. On behalf of the Classes, Plaintiff also seek an injunction requiring  
24 Tax Group to cease all unsolicited and unauthorized prerecorded calling activities  
25 and an award of statutory damages to the class members, together with costs and  
26 reasonable attorneys' fees to be paid from a common fund established for the  
27 benefit of the Classes.

**FACTS SPECIFIC TO PLAINTIFF RODRIGUEZ**

1  
2           34. On December 19, 2004, Plaintiff Rodriguez registered his cellular  
3 telephone number on the National Do Not Call Registry to avoid receiving  
4 unsolicited telemarketing calls on his cellular telephone.

5           35. More than 30 days after Plaintiff Rodriguez registered his cellular  
6 telephone number on the National Do Not Call Registry, Tax Group, either directly,  
7 or through its affiliates and agents, made a series of unsolicited telemarketing calls  
8 to Plaintiff Rodriguez. The calls came to Plaintiff Rodriguez on his cellular  
9 telephone using an artificial or pre-recorded voice. The calls began on or around  
10 December of 2016.

11           36. Tax Group utilized telephone numbers 830-212-6739, 830-266-5013,  
12 and 830-214-7637 to place its unsolicited prerecorded calls to Plaintiff Rodriguez.

13           37. As an illustrative example (and not one of limitation) Tax Group  
14 contacted or attempted to contact Plaintiff Rodriguez on the following dates:

- 15           December 26, 2016 (3 calls);
- 16           December 27, 2016;
- 17           December 28, 2016;
- 18           December 29, 2016;
- 19           December 30, 2016
- 20           January 2, 2017;
- 21           January 3, 2017;
- 22           January 4, 2017;
- 23           January 5, 2017;
- 24           January 9, 2017;
- 25           January 13, 2017;
- 26           January 16, 2017; and
- 27           January 17, 2017 (3 calls).

1 38. All of the prerecorded telephone calls from Tax Group were made to  
2 solicit Plaintiff Rodriguez to obtain its IRS debt-relief services.

3 39. On at least one occasion, when Plaintiff Rodriguez answered one of  
4 Tax Group's calls, an automated recording explained to him that the call was in  
5 reference to a tax-relief program. He was instructed to press #1 to speak to Tax  
6 Group's representative and to press #9 to be removed from Tax Group's list.  
7 Plaintiff Rodriguez pressed #9 to be removed from Tax Group's list.

8 40. In addition to pressing #9 to discontinue receiving calls—and due to  
9 Tax Group's barrage of calls—Plaintiff Rodriguez was forced to request that Tax  
10 Group stop calling him several times via voice messages left on Tax Group's  
11 message machine.

12 41. At no time did Plaintiff Rodriguez consent to the receipt of  
13 prerecorded calls to his cellular telephone from Tax Group, let alone provide prior  
14 oral or written express consent to Tax Group for such calls to be placed.

15 42. By making unauthorized prerecorded telephone calls after being told to  
16 stop as alleged herein, Tax Group has caused consumers actual harm. In the present  
17 case, a consumer could be subjected to multiple, repeating unsolicited prerecorded  
18 calls because Tax Group's opt-out mechanism does not work. Tax Group caused  
19 Plaintiff Rodriguez and the members of the Classes actual harm and cognizable  
20 legal injury. This includes the aggravation and nuisance and invasions of privacy  
21 that result from the receipt of such calls and a loss of value realized for the monies  
22 consumers paid to their wireless carriers for the receipt of such calls. Furthermore,  
23 the calls interfered with Rodriguez's and the other Class members' use and  
24 enjoyment of their cellphones, including the related data, software, and hardware  
25 components. Tax Group also caused substantial injury to their phones by causing  
26 wear and tear on their property, consuming battery life, and in certain cases  
27 appropriating cellular minutes, in addition to the invasion of privacy and nuisance  
28

1 of having to answer such unsolicited calls.

2 43. To redress these injuries, Rodriguez, on behalf of himself and the  
3 Classes of similarly situated individuals alleged in this Complaint, brings suit under  
4 the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits  
5 unsolicited autodialed calls to cellular telephones.

6 44. On behalf of the Classes, Rodriguez also seek an injunction requiring  
7 Tax Group to cease all unsolicited and unauthorized prerecorded calling activities  
8 and an award of statutory damages to the class members, together with costs and  
9 reasonable attorneys' fees to be paid from a common fund established for the  
10 benefit of the Classes.

11  
12 **CLASS ACTION ALLEGATIONS**

13  
14 45. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure  
15 23(a), (b)(2), and (b)(3) on behalf of themselves and the three classes defined as  
16 follows:

17 **Prerecorded No Consent Class:** All persons in the United States who  
18 from the four years prior to the date of the filing of the instant action  
19 (1) Defendant (or a third person acting on behalf of Defendant) called,  
20 (2) on the person's cellular telephone, (3) for the purpose of selling  
21 Defendant's products and services, (4) using a prerecorded voice, and  
22 (5) for whom Defendant claims it obtained prior express consent in the  
same manner as Defendant claims it supposedly obtained prior express  
consent to call the Plaintiffs.

23 **Prerecorded Stop Class:** All persons in the United States who from  
24 the four years prior to the date of the filing of the instant action (1)  
25 Defendant (or a third person acting on behalf of Defendant) called, (2)  
26 on the person's cellular telephone, (3) for the purpose of selling  
27 Defendant's products and services, (4) using a prerecorded voice, (4)  
after the person informed Defendant that s/he no longer wished to  
receive calls from Defendant.

1           **Do Not Call Registry Class**: All persons in the United States who (1)  
2 Defendant (or a third person acting on behalf of Defendant) called  
3 more than one time on his/her telephone; (2) within any 12-month  
4 period (3) where the telephone number had been listed on the National  
5 Do Not Call Registry for at least thirty days; (4) for the purpose of  
6 selling Defendant's products and services; and (5) for whom  
7 Defendant claims it obtained prior express consent in the same manner  
8 as Defendant claims it obtained prior express consent to call the  
9 Plaintiffs.

10           46. The following people are excluded from the Classes: (1) any Judge or  
11 Magistrate presiding over this action and members of their families; (2) Defendant,  
12 Defendant's subsidiaries, parents, successors, predecessors, and any entity in which  
13 the Defendant or its parents have a controlling interest and its current or former  
14 employees, officers and directors; (3) persons who properly execute and file a  
15 timely request for exclusion from the Classes; (4) persons whose claims in this  
16 matter have been finally adjudicated on the merits or otherwise released; (5)  
17 Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives,  
18 successors, and assigns of any such excluded persons. Plaintiffs anticipate needing  
19 to amend the class definitions following reasonable and appropriate class discovery.

20           47. On information and belief, there are hundreds, if not thousands, of  
21 members of the Classes such that joinder of all members is impracticable.

22           48. There are several questions of law and fact common to the claims of  
23 Plaintiffs and the other members of the Classes, and those questions predominate  
24 over any questions that may affect individual members of the Classes. Common  
25 questions for the Class members that may be answered in a single stroke include but  
26 are not limited to the following:

- 27           a. whether Defendant's conduct constitutes a violation of the  
28           TCPA;
- b. whether Defendant utilized an automatic telephone dialing  
          system or pre-recorded voice to place pre-recorded calls to

- 1 members of the Classes;
- 2 c. whether members of the Classes are entitled to treble damages
- 3 based on the willfulness of Defendant's conduct;
- 4 d. whether Defendant obtained prior express written consent to
- 5 contact any class members on their cellular telephones;
- 6 e. whether Defendant systematically made multiple telephone calls
- 7 to consumers whose telephone numbers were registered with the
- 8 National Do Not Call Registry and whether calls were made to
- 9 such persons after they requested to no longer be called;
- 10 f. whether Plaintiffs and the members of the Do Not Call Class are
- 11 entitled to treble damages based on the willfulness of
- 12 Defendant's conduct.

13 49. The factual and legal bases of Defendant's liability to Plaintiffs and to  
14 the other members of the Classes are the same, resulting in injury to the Plaintiffs  
15 and to all of the other members of the Classes, including the annoyance and  
16 aggravation associated with such pre-recorded calls as well as the loss of cellular  
17 plan minutes and temporary inability to enjoy and use their cellphones, as a result  
18 of the transmission of the pre-recorded calls alleged herein. Plaintiffs and the other  
19 members of the Classes have all suffered harm and damages as a result of  
20 Defendant's unlawful and wrongful conduct of placing pre-recorded calls.  
21 Plaintiffs' claims are typical of the claims of the members of the Classes as all  
22 members of the Classes are similarly affected by Defendant's wrongful conduct.  
23 Plaintiffs, like other members of the Classes, received unsolicited pre-recorded calls  
24 from Defendant. Plaintiffs are advancing the same claims and legal theory on behalf  
25 of themselves and all absent members of the Classes.

26 50. Plaintiffs will fairly and adequately represent and protect the interests  
27 of the other members of the Classes. Plaintiffs' claims are made in a representative  
28

1 capacity on behalf of the other members of the Classes. Plaintiffs have no interest  
2 antagonistic to the interests of the other members of the proposed Classes and is  
3 subject to no unique defenses. Plaintiffs have retained counsel with substantial  
4 experience in prosecuting complex litigation and class actions. Plaintiffs and their  
5 counsel are committed to vigorously prosecuting this action on behalf of the  
6 members of the Classes, and have the financial resources to do so. Neither Plaintiffs  
7 nor their counsel have any interest adverse to those of the other members of the  
8 Classes.

9 51. The suit may be maintained as a class action under Federal Rule of  
10 Civil Procedure 23(b)(2) because Defendant has acted, and/or has refused to act, on  
11 grounds generally applicable to the Classes, thereby making appropriate final  
12 injunctive relief. Specifically, injunctive relief is necessary and appropriate to  
13 require Defendant to discontinue placing unsolicited and unauthorized pre-recorded  
14 calls to the public. Likewise, Defendant has acted and fails to act on grounds  
15 generally applicable to the Plaintiffs and the other members of the Classes in  
16 placing the pre-recorded calls at issue, requiring the Court's imposition of uniform  
17 relief to ensure compatible standards of conduct toward the members of the Classes.

18 52. In addition, this suit may be maintained as a class action under Federal  
19 Rule of Civil Procedure 23(b)(3) because a class action is superior to all other  
20 available methods for the fair and efficient adjudication of this controversy. Absent  
21 a class action, most members of the Classes would find the cost of litigating their  
22 claims to be prohibitive, and will have no effective remedy. The class treatment of  
23 common questions of law and fact is also superior to multiple individual actions or  
24 piecemeal litigation in that it conserves the resources of the courts and the litigants,  
25 and promotes consistency and efficiency of adjudication. The claims asserted herein  
26 are applicable to all consumers throughout the United States who received an  
27 unsolicited and unauthorized pre-recorded call from Defendant. The injury suffered  
28

1 by each individual class member is relatively small in comparison to the burden and  
2 expense of individual prosecution of the complex and extensive litigation  
3 necessitated by Defendant's conduct. It would be virtually impossible for members  
4 of the Classes individually to redress effectively the wrongs done to them. Even if  
5 the members of the Classes could afford such litigation, the court system could not.  
6 Individualized litigation presents a potential for inconsistent or contradictory  
7 judgments. Individualized litigation increases the delay and expense to all parties,  
8 and to the court system, presented by the complex legal and factual issues of the  
9 case. By contrast, the class action device presents far fewer management  
10 difficulties, and provides the benefits of single adjudication, economy of scale, and  
11 comprehensive supervision by a single court.

12 53. Adequate notice can be given to the members of the Classes directly  
13 using information maintained in Defendant's records or through notice by  
14 publication.

15 **FIRST CAUSE OF ACTION**  
16 **Telephone Consumer Protection Act**  
17 **(Violation of 47 U.S.C. § 227, *et seq.*)**  
18 **(On Behalf of Plaintiffs and the Prerecorded No Consent Class)**

19 54. Plaintiffs incorporate by reference the foregoing allegations as if fully  
20 set forth herein.

21 55. Defendant made unsolicited and unwanted telemarketing calls to  
22 telephone numbers belonging to Plaintiffs and the other members of the Pre-  
23 recorded No Consent Class on their cellular telephones in an effort to sell its  
24 products and services using a prerecorded voice as defined in the TCPA.

25 56. Defendant made the telephone calls using equipment that had the  
26 capacity to store or produce telephone numbers to be called using a random or  
27 sequential number generator, and/or receive and store lists of phone numbers, and  
28 to dial such numbers, *en masse*.

57. Defendant utilized equipment that made the telephone calls to

1 Plaintiffs and other members of the Prerecorded No Consent Class simultaneously  
2 and without human intervention.

3 58. Defendant failed to obtain any prior express written consent from  
4 Plaintiffs and other called parties that included, as required by 47 C.F.R. §  
5 64.1200(f)(8)(i) a “clear and conspicuous” disclosure informing the person signing  
6 that:

7 (A) By executing the agreement, such person authorizes the seller to  
8 deliver or cause to be delivered to the signatory telemarketing calls  
9 using an automatic telephone dialing system or an artificial or  
10 prerecorded voice; and

11 (B) The person is not required to sign the agreement (directly or  
12 indirectly), or agree to enter into such an agreement as a condition of  
13 purchasing any property, goods, or services.

14 59. Any consent that was supposedly obtained required Plaintiffs and the  
15 Class members to receive autodialed and prerecorded calls.

16 60. Defendant also failed to obtain any prior express oral consent of the  
17 persons receiving its prerecorded telephone calls.

18 61. By making unsolicited telephone calls to Plaintiffs and members of the  
19 Prerecorded No Consent Class’s cellular telephones using a prerecorded voice,  
20 Defendant violated 47 U.S.C. § 227(b)(1)(B) by doing so without prior express  
21 consent as required.

22 62. As a result of Defendant’s unlawful conduct, Plaintiffs and the  
23 members of the Prerecorded No Consent Class suffered actual damages in the form  
24 of monies paid to receive the unsolicited telephone calls on their cellular phones  
25 and, under Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500  
26 in damages for each such violation of the TCPA.

27 63. Should the Court determine that Defendant’s conduct was willful and  
28 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of

1 statutory damages recoverable by Plaintiffs and the other members of the  
2 Prerecorded No Consent Class.

3 **SECOND CAUSE OF ACTION**  
4 **Telephone Consumer Protection Act**  
5 **(Violation of 47 U.S.C. § 227, *et seq.*)**  
6 **(On Behalf of Plaintiff Rodriguez and the Prerecorded Stop Class)**

7 64. Plaintiff Rodriguez incorporates by reference the foregoing allegations  
8 as if fully set forth herein.

9 65. Defendant made unsolicited and unwanted prerecorded calls to  
10 telephone numbers belonging to Plaintiff Rodriguez and the other members of the  
11 Prerecorded Stop Class on their cellular telephones after they had informed  
12 Defendant, orally and/or through the Defendant's automated prompt system, that  
13 they no longer wished to receive such calls from Defendant.

14 66. Defendant made the telephone calls using equipment that had the  
15 capacity to store or produce telephone numbers to be called using a random or  
16 sequential number generator, and/or receive and store lists of phone numbers, and  
17 to dial such numbers, *en masse*.

18 67. Defendant utilized equipment that made the telephone calls to Plaintiff  
19 Rodriguez and other members of the Prerecorded Stop Class simultaneously and  
20 without human intervention.

21 68. By making unsolicited telephone calls to Plaintiff Rodriguez and other  
22 members of the Prerecorded Stop Class's cellular telephones using a prerecorded  
23 voice after they requested to no longer receive such calls, Defendant violated 47  
24 U.S.C. § 227(b)(1)(B) by doing so without prior express consent.

25 69. As a result of Defendant's unlawful conduct, Plaintiff Rodriguez and  
26 the members of the Prerecorded Stop Class suffered actual damages in the form of  
27 monies paid to receive the unsolicited telephone calls on their cellular phones and,  
28 under Section 227(b)(3)(B), are each entitled to, inter alia, a minimum of \$500 in

1 damages for each such violation of the TCPA.

2 70. Should the Court determine that Defendant’s conduct was willful and  
3 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of  
4 statutory damages recoverable by Plaintiff Rodriguez and the other members of the  
5 Pre-recorded Stop Class.

6 **THIRD CAUSE OF ACTION**  
7 **Telephone Consumer Protection Act**  
8 **(Violation of 47 U.S.C. § 227, *et seq.*)**  
9 **(On Behalf of Plaintiffs and the Do Not Call Registry Class)**

10 71. Plaintiffs incorporate by reference the foregoing allegations as if fully  
11 set forth herein.

12 72. 47 U.S.C. § 227(c) provides that any “person who has received more  
13 than one telephone call within any 12-month period by or on behalf of the same  
14 entity in violation of the regulations prescribed under this subsection may” bring a  
15 private action based on a violation of said regulations, which were promulgated to  
16 protect telephone subscribers’ privacy rights to avoid receiving telephone  
17 solicitations to which they object.

18 73. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c),  
19 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]  
20 residential telephone subscriber who has registered his or her telephone number on  
21 the national do-not-call registry of persons who do not wish to receive telephone  
22 solicitations that is maintained by the federal government.”

23 74. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are  
24 applicable to any person or entity making telephone solicitations or telemarketing  
25 calls to wireless telephone numbers to the extent described in the FCC’s July 3,  
26 2003 Report and Order, which in turn, provides as follows:

27 The Commission’s rules provide that companies making telephone  
28

1 solicitations to residential telephone subscribers must comply with  
2 time of day restrictions and must institute procedures for maintaining  
3 do-not-call lists. For the reasons described above, we conclude that  
4 these rules apply to calls made to wireless telephone numbers. We  
5 believe that wireless subscribers should be afforded the same  
6 protections as wireline subscribers.<sup>12</sup>

7 75. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity  
8 shall initiate any call for telemarketing purposes to a residential telephone  
9 subscriber unless such person or entity has instituted procedures for maintaining a  
10 list of persons who request not to receive telemarketing calls made by or on behalf  
11 of that person or entity. The procedures instituted must meet the following  
12 minimum standards:

13 (1) Written policy. Persons or entitles making calls for telemarketing  
14 purposes must have a written policy, available upon demand, for  
15 maintaining a do-not-call list.

16 (2) Training of personnel engaged in telemarketing. Personnel engaged  
17 in any aspect of telemarketing must be informed and trained in the  
18 existence and use of the do-not-call list.

19 (3) Recording, disclosure of do-not-call requests. If a person or entity  
20 making a call for telemarketing purposes (or on whose behalf such a  
21 call is made) receives a request from a residential telephone subscriber  
22 not to receive calls from that person or entity, the person or entity must  
23 record the request and place the subscriber’s name, if provided, and  
24 telephone number on the do-not-call list at the time the request is  
25 made. Persons or entities making calls for telemarketing purposes (or  
26 on whose behalf such calls are made) must honor a residential  
27 subscriber’s do-not-call request within a reasonable time from the date  
28 such request is made. This period may not exceed thirty days from the  
date of such request . . . .

(4) Identification of sellers and telemarketers. A person or entity

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<sup>12</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

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making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber’s do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

76. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to landline and wireless telephone subscribers such as Plaintiffs and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

77. Defendant also violated 47 C.F.R. § 64.1200(d) by failing to have a written policy available on demand for dealing with do not call requests, by failing to inform or train its personnel engaged in telemarketing regarding the existence and/or use of any do not call list, by failing to internally record and honor do not call requests, and by failing to honor do not call requests within 30 days.

78. Defendant made more than one unsolicited telephone call to Plaintiffs and other members of the Do Not Call Registry Class within a 12-month period without their prior express consent to receive such calls. Plaintiffs and other

1 members of the Do Not Call Registry Class never provided any form of consent to  
2 receive telephone calls from Defendant, and/or Defendant does not have a current  
3 record of consent to place telemarketing calls to them.

4 79. Defendant violated 47 C.F.R. § 64.1200(d) by initiating calls for  
5 telemarketing purposes to residential and wireless telephone subscribers, such as  
6 Plaintiffs and the Do Not Call Registry Class, without instituting procedures that  
7 comply with the regulatory minimum standards for maintaining a list of persons  
8 who request not to receive telemarketing calls from them.

9 80. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiffs and the Do  
10 Not Call Registry Class received more than one telephone call in a 12-month period  
11 made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described  
12 above. As a result of Defendant's conduct as alleged herein, Plaintiffs and the Do  
13 Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §  
14 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such  
15 violations of 47 C.F.R. § 64.1200.

16 81. To the extent Defendant's misconduct is determined to be willful and  
17 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
18 statutory damages recoverable by the members of the Do Not Call Registry Class.

19  
20 **PRAYER FOR RELIEF**

21 **WHEREFORE**, Plaintiffs Van Elzen and Rodriguez, on behalf of  
22 themselves and the Classes, pray for the following relief:

23 A. An order certifying the Classes as defined above, appointing  
24 Plaintiff Van Elzen and Plaintiff Rodriguez as the representatives of the  
25 Classes, and appointing their counsel as Class Counsel;

26 B. An award of actual monetary loss from such violations or the  
27 sum of five hundred dollars (\$500.00) for each violation, whichever is greater

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all to be paid into a common fund for the benefit of the Plaintiffs and the Class Members;

C. An order declaring that Defendant's actions, as set out above, violate the TCPA;

D. A declaratory judgment that Defendant's telephone calling equipment constitutes an automatic telephone dialing system under the TCPA;

E. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of its unlawful telephone calling practices;

F. An order requiring Defendant to identify any third-party involved in the pre-recorded calling as set out above, as well as the terms of any contract or compensation arrangement it has with such third parties;

G. An injunction requiring Defendant to cease all unsolicited pre-recorded calling activities, and otherwise protecting the interests of the Classes;

H. An injunction prohibiting Defendant from using, or contracting the use of, an automatic telephone dialing system without obtaining, and maintaining records of, call recipient's prior express written consent to receive calls made with such equipment;

I. An injunction prohibiting Defendant from contracting with any third-party for marketing purposes until it establishes and implements policies and procedures for ensuring the third-party's compliance with the TCPA;

J. An injunction prohibiting Defendant from conducting any future telemarketing activities until it has established an internal Do Not Call List as required by the TCPA;

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K. An award of reasonable attorneys’ fees and costs to be paid out of the common fund prayed for above; and

L. Such other and further relief that the Court deems reasonable and just.

**JURY DEMAND**

Plaintiffs request a trial by jury of all claims that can be so tried.

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Respectfully submitted,

Dated: March 3, 2017

**DAVID VAN ELZEN and  
RONALD RODRIGUEZ,**  
individually, and on behalf of all  
others similarly situated,

By: /s/Steven L. Weinstein  
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*Counsel for Plaintiff and the Putative  
Classes*

*\*Admission pro hac vice to be sought*

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DAVID VAN ELZEN and RONALD RODRIGUEZ, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff n/a (EXCEPT IN U.S. PLAINTIFF CASES)

Steven L. Weinstein Name, Address, and Telephone Number P.O. Box 27414 Oakland, Ca T: 510-336-2181 F: 510-336-2181

DEFENDANTS

TAX GROUP CENTER, INC., a California corporation,

County of Residence of First Listed Defendant San Francisco (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. section 227 et seq.

Brief description of cause: Violation of the Telephone Consumer Protection Act (TCPA)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE March 3, 2017 SIGNATURE OF ATTORNEY OF RECORD s/Steven L. Weinstein

FOR OFFICE USE ONLY

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**

## Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# **EXHIBIT D**

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAVID VAN ELZEN**, individually and on behalf of all others similarly situated,

*Plaintiff,*

v.

**REVIMEDIA, INC.**, a Delaware corporation,

*Defendant.*

Case No. :

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial (“Complaint”) against Defendant ReviMedia, Inc. (“ReviMedia”) to stop its practice of sending unsolicited text messages and making prerecorded phone calls to cellular telephones - including those on the Do Not Call Registry - and to obtain redress, including injunctive relief, for all persons injured by its conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**NATURE OF THE ACTION**

1. Defendant ReviMedia, Inc. is a lead generation company that owns and/or operates the website, bestquotes.com”<sup>1</sup> Defendant also offers lead generation software that

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<sup>1</sup> [https://www.facebook.com/pg/revimedia/about/?ref=page\\_internal](https://www.facebook.com/pg/revimedia/about/?ref=page_internal).

<sup>2</sup> <http://www.inc.com/profile/revimedia>.

<sup>3</sup> ReviMedia owns and operates the website BestQuotes.com. See [http://www.facebook.com/pg/revimedia/about/?ref=page\\_internal](http://www.facebook.com/pg/revimedia/about/?ref=page_internal); <https://bestquotes.com/terms->

features lead scoring, automated optimizations and analytics for the insurance, automotive, and home security industries.<sup>2</sup>

2. Unfortunately for consumers, Defendant cast its marketing net too wide. That is, in an attempt to promote its business and generate leads, Defendant conducted (and continues to conduct) a wide-scale telemarketing campaign that features the sending of repeated unsolicited text messages and the making of prerecorded telephone calls to consumers' cellular telephones without prior express written consent - and to those who have registered their telephone numbers on the Do Not Call Registry - all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA").

**A. Bulk SMS Marketing**

3. In recent years, marketers who have felt stymied by federal laws limiting solicitation by telephone, fax machine, and e-mail have increasingly looked to alternative technologies through which to send bulk messages cheaply.

4. Bulk text messaging, or SMS marketing, has emerged as a new and direct method of communicating and soliciting consumer business. The term "Short Message Service" or "SMS" is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters. An SMS message is a text message call directed to a wireless device through the use of the telephone number assigned to the device.

5. When an SMS message call is successfully made, the recipient's cell phone rings, alerting him or her that a call is being received. As cellular telephones are inherently mobile and are frequently carried on their owner's person, calls to cellular telephones, including SMS

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<sup>2</sup> <http://www.inc.com/profile/revimedia>.

messages, may be received by the called party virtually anywhere worldwide and instantaneously.

### **PARTIES**

6. Plaintiff David Van Elzen is a natural person and a resident of Appleton, Wisconsin, in the County of Outagamie.

7. Defendant ReviMedia, Inc. is a corporation organized and existing under the laws of the State of Delaware with a principal place of business located at 501 5<sup>th</sup> Avenue, suite 124, in New York, New York 10017. Defendant conducts business throughout this District, the State of New York, and the United States. Defendant's agent for service of process can be served at 80 State Street, Albany, New York 12207.

### **JURISDICTION AND VENUE**

8. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute. This Court has personal jurisdiction over Defendant because Defendant conducts a significant amount of business in this District, solicits consumers in this District, made and continues to send unsolicited text messages and make prerecorded telephone calls in this District, and because the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

9. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant conducts a significant amount of business within this District, and because the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District. Venue is additionally proper because Defendant resides in this District.

### COMMON FACTUAL ALLEGATIONS

10. Defendant is a lead generation company serving the insurance, automotive, and home security industries.

11. Text messages, like the ones sent in the instant action, are considered calls under the TCPA. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (July 3, 2003); *see also Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

12. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

13. Yet in violation of the aforementioned rule, Defendant fails to obtain any prior express written consent to make these autodialed text messages and prerecorded telephone calls to cellular telephone numbers.

14. In recent years, companies such as Defendant have turned to unsolicited telemarketing as a way to increase its customer base. Widespread telemarketing is a primary method by which Defendant recruits new customers.

15. At all times material to this Complaint Defendant was and is fully aware that unsolicited telemarketing text messages and prerecorded telephone calls are being made to consumers’ cellular telephones through their own efforts and their agents.

16. Defendant knowingly made (and continues to make) unsolicited telemarketing text messages and prerecorded telephone calls without the prior express written consent of the call recipients and even to those on the National Do Not Call Registry. In so doing, Defendant not only invaded the personal privacy of Plaintiff and members of the putative Classes, but also intentionally and repeatedly violated the TCPA.

**FACTS SPECIFIC TO PLAINTIFF DAVID VAN ELZEN**

17. On June 10, 2011, Plaintiff registered his cellular telephone number on the National Do Not Call Registry to avoid receiving unsolicited telemarketing calls and text messages on his cellular telephone.

18. On February 18, 2017 at 4:59 a.m. (and more than 30 days after registering his cellular telephone number on the Do Not Call Registry), Plaintiff received the first unsolicited text message from ReviMedia. Said unsolicited text message read, “David, You’ve caught me off hours. My hours are M-F 9AM-7PM EST. Is there a good time during those hours I can schedule a call for you?”

19. Just over an hour later, on the same day, at 6:12 a.m., Plaintiff received a second unsolicited text message from ReviMedia stating, “This is Best Quotes, we were reaching out to you regarding the health insurance quote you requested. When’s a good time to go over your options?”<sup>3</sup>

20. The phone number provided in the text messages, 619-326-3259, belongs to and/or is used by ReviMedia in its attempts to solicit business, and in its attempts to contact Plaintiff.

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<sup>3</sup> ReviMedia owns and operates the website BestQuotes.com. *See* [http://www.facebook.com/pg/revimedia/about/?ref=page\\_internal](http://www.facebook.com/pg/revimedia/about/?ref=page_internal); <https://bestquotes.com/terms-and-conditions/>.

21. On or around February 20, 2017 at approximately 10:15 a.m., Plaintiff received a prerecorded telephone call from 619-326-3259.

22. During the telephone call, a prerecorded voice instructed Plaintiff to press #1 for a quote, press #2 to schedule a call-back, and #9 to be removed from its contact list. Plaintiff pressed #9 to be removed from its contact list.

23. For the sole purpose of discovering how ReviMedia obtained his information, Plaintiff contacted ReviMedia and spoke with ReviMedia's agent, "Joe." "Joe" informed Plaintiff that he could not give him that information due to security reasons. Thereafter, Plaintiff terminated the call.

24. Plaintiff does not have a relationship with ReviMedia, has never provided his telephone number directly to ReviMedia, or requested that ReviMedia send text messages or place prerecorded telephone calls to him or offer him its services. Simply put, Plaintiff has never provided his prior express written consent to ReviMedia to make prerecorded telephone calls or to send text messages to him and has no business relationship with ReviMedia whatsoever.

25. By sending unauthorized text messages and placing prerecorded telephone calls as alleged herein, ReviMedia has caused consumers actual harm in the form of annoyance, nuisance, and invasion of privacy. In addition, the text messages and prerecorded telephone calls disturbed Plaintiff's use and enjoyment of his phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on Plaintiff's phone.

26. In order to redress these injuries, Plaintiff, on behalf of himself and the Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited voice and text calls to cellular telephones.

27. On behalf of the Classes, Plaintiff seeks an injunction, requiring Defendant to cease all wireless calling and text messaging activities and an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

### CLASS ALLEGATIONS

28. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following three Classes:

**Prerecorded No Consent Class:** All persons in the United States from four years to the filing of the instant action who (1) Defendant (or a third person acting on behalf of Defendant) called, (2) on the person's cellular telephone, (3) for the purpose of selling Defendant's products and services, (4) using a prerecorded voice, and (5) for whom Defendant claims it obtained prior express written consent in the same manner as Defendant claims it supposedly obtained prior express written consent to call the Plaintiff.

**Text Message No Consent Class:** All persons in the United States from four years prior to the filing of the instant action who (1) Defendant (or a third person acting on behalf of Defendant) sent text messages, (2) to the person's cellular telephone number, and (3) for whom Defendant claims it obtained prior express written consent in the same manner as Defendant claims it supposedly obtained prior express written consent to send automated text messages to the Plaintiff.

**DNC No Consent Class:** All persons in the United States who (1) received more than one text message on his/her cellular telephone; (2) within any 12-month period (3) where the cellular telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of selling Defendant's products and services; and (5) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it obtained prior express consent to send automated text messages and/or place prerecorded telephone calls to the Plaintiff.

29. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents

have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant has been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

30. **Numerosity:** The exact sizes of the Classes are unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant sent autodialed text messages and made prerecorded telephone calls to thousands of consumers who fall into the definition of the Classes. Members of the Classes can be easily identified through Defendant's records.

31. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) whether Defendant's conduct constitutes a violation of the TCPA;
- (b) whether Defendant utilized an automatic telephone dialing system to send text messages to members of the Classes;
- (c) whether Defendant utilized an automatic telephone dialing system or prerecorded voice to place prerecorded calls to members of the Classes;
- (d) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct;
- (e) whether Defendant obtained prior express written consent to contact any Class members;
- (f) Whether Defendant sent multiple unsolicited text messages to consumers who were registered on the Do Not Call registry.

32. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Classes.

33. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as a whole, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

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**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violation of 47 U.S.C. § 227, *et seq.*)**  
**(On Behalf of Plaintiff Van Elzen and the Prerecorded No Consent Class)**

34. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

35. Defendant made unsolicited and unwanted telemarketing calls to telephone numbers belonging to Plaintiff and the other members of the Prerecorded No Consent Class on their cellular telephones in an effort to sell its products and services using a prerecorded voice as defined in the TCPA.

36. Defendant made the telephone calls using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*.

37. Defendant utilized equipment that made the telephone calls to Plaintiff and other members of the Prerecorded No Consent Class simultaneously and without human intervention.

38. Defendant failed to obtain any prior express written consent from Plaintiff and other called parties that included, as required by 47 C.F.R. § 64.1200(f)(8)(i) a “clear and conspicuous” disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

39. Any consent that was supposedly obtained required Plaintiff and the class members to receive autodialed and prerecorded calls.

40. Defendant also failed to obtain any prior express oral consent of the persons receiving its prerecorded telephone calls.

41. By making unsolicited telephone calls to Plaintiff and members of the Prerecorded No Consent Class's cellular telephones using a prerecorded voice, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by doing so without prior express written consent as required.

42. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Prerecorded No Consent Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular phones and, under Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

43. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Prerecorded No Consent Class.

**SECOND CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violation of 47 U.S.C. § 227, *et seq.*)**  
**(On Behalf of Plaintiff Van Elzen and the Text Message No Consent Class)**

44. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

45. Defendant sent autodialed text messages to cellular telephone numbers belonging to Plaintiff and other members of the Text Message No Consent Class without first obtaining prior express written consent to receive such autodialed text messages.

46. Defendant sent the text autodialed text messages using equipment that had the capacity to store or produce telephone numbers using a random or sequential number generator, to receive and store lists of phone numbers, and to dial such numbers, *en masse*, without human

intervention. The telephone dialing equipment utilized by Defendant, also known as a predictive dialer, dialed numbers from a list, or dialed numbers from a database of telephone numbers, in an automatic and systematic manner. Defendant's autodialer disseminated information *en masse* to Plaintiff and other consumers.

47. By sending the unsolicited text messages to Plaintiff and the cellular telephones of members of the Text Message No Consent Class without their prior express written consent, and by utilizing an automatic telephone dialing system to make those calls, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

48. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Text Message No Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

49. In the event that the Court determines that Defendant's conduct was willful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Text Message No Consent Class.

**THIRD CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227, *et seq.*)**  
**(On Behalf of Plaintiff Van Elzen and the DNC No Consent Class)**

50. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

51. 47 U.S.C. § 227(c) provides that any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of

said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

52. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o 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 of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

53. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the FCC's July 3, 2003 Report and Order, which in turn, provides as follows:

The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For the reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.<sup>4</sup>

54. 47 C.F.R. § 64.1200(d) further provides that "[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

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<sup>4</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) 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. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request . . . .

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

55. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to wireless telephone subscribers such as Plaintiff and the DNC No Consent Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

56. Defendant also violated 47 C.F.R. § 64.1200(d) by failing to have a written policy of dealing with do not call requests, by failing to inform or train its personnel regarding any do not call list, and by failing to record and honor do not call requests.

57. Defendant made more than one unsolicited text message and/or telephone call to Plaintiff and other members of the DNC No Consent Class within a 12-month period without their prior express consent to receive such text messages and/or telephone calls. Plaintiff and other members of the DNC No Consent Class never provided any form of consent to receive text messages and/or telephone calls from Defendant, and/or Defendant does not have a current record of consent to place telemarketing text messages to them.

58. Defendant violated 47 C.F.R. § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the DNC No Consent Class, without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls and/or text messages from them.

59. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the DNC No Consent Class received more than one text message and/or telephone calls in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiff and the DNC No Consent Class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

60. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by Plaintiff and the DNC No Consent Class.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff David Van Elzen, individually and on behalf of the Classes, prays for the following relief:

1. An order certifying the Classes as defined above, appointing Plaintiff David Van Elzen as the representative of the Classes, and appointing his counsel as Class Counsel;
2. An award of actual monetary loss from such violations or the sum of five hundred dollars (\$500.00) for each violation, whichever is greater all to be paid into a common fund for the benefit of the Plaintiff and the Class Members;
3. An order declaring that Defendant's actions, as set out above, violate the TCPA;
4. A declaratory judgment that Defendant's prerecorded telephone calling and/or text messaging equipment constitutes an automatic telephone dialing system under the TCPA;
5. An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of its unlawful text messaging and prerecorded telephone calling practices;
6. An order requiring Defendant to identify any third-party involved in the autodialed text messaging as set out above, as well as the terms of any contract or compensation arrangement it has with such third parties;
7. An order requiring Defendant to identify any third-party involved in the prerecorded calling as set out above, as well as the terms of any contract or compensation arrangement it has with such third parties;
8. An injunction requiring Defendant to cease all unsolicited autodialed text messaging and prerecorded telephone calling activities, and otherwise protecting the interests of the Classes;

9. An injunction prohibiting Defendant from using, or contracting the use of, an automatic telephone dialing system without obtaining, and maintaining records of, call recipient's prior express written consent to receive text messages and prerecorded telephone calls made with such equipment;

10. An injunction prohibiting Defendant from contracting with any third-party for marketing purposes until they establish and implement policies and procedures for ensuring the third-party's compliance with the TCPA;

11. An injunction prohibiting Defendant from conducting any future telemarketing activities until they have established an internal Do Not Call List as required by the TCPA;

12. An award of reasonable attorneys' fees and costs to be paid out of the common fund prayed for above; and

13. Such other and further relief that the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of Classes of similarly situated individuals

Dated: March 23, 2017

By:  /s/Stefan Coleman  
One of Plaintiff's Attorneys

Stefan Coleman (4734091)  
law@stefancoleman.com  
LAW OFFICES OF STEFAN COLEMAN, P.A.  
5 Penn Plaza, 23<sup>rd</sup> floor  
New York, New York 10001  
Telephone: (877) 333-9427  
Facsimile: (888) 498-8946  
Attorney for Plaintiff and the Classes

# **EXHIBIT E**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA**

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**MOBILEHELP, LLC** a Delaware limited  
liability company,

*Defendant.*

CASE NO.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff David Van Elzen (“Plaintiff” or “Van Elzen”) brings this Class Action Complaint and Demand for Jury Trial (“Complaint”) against Defendant MobileHelp, LLC (“Defendant” or “MobileHelp”) to stop its practice of making unsolicited prerecorded solicitation telephone calls and text messages to the cellular telephones of consumers nationwide and to obtain redress, including injunctive relief, for all persons injured by its conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**NATURE OF THE ACTION**

1. Defendant MobileHelp provides “Mobile-Personal Emergency Response Systems” and products to elderly consumers that will alert MobileHelp if the elderly consumer has an emergency, be it medical or otherwise.<sup>1</sup>

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<sup>1</sup> <https://www.mobilehelp.com/>.

2. Unfortunately for consumers, Defendant casts its marketing net too wide. That is, in an attempt to promote Defendant's business and services in the elderly-care-and-response industry, Defendant conducted (and continues to conduct) a wide-scale telemarketing campaign that features the making of repeated unsolicited prerecorded telephone calls and automated text messages to consumers' cellular telephones, including those that appear on the National Do Not Call Registry, without consent -- all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

3. By making the prerecorded telephone calls and sending the text messages at issue in this Complaint, Defendant caused Plaintiff and the members of the Classes actual harm and cognizable legal injury. This includes the aggravation, annoyance, and nuisance and invasions of privacy that result from the receipt of such calls and/or text messages in addition to the loss of memory in the phones themselves the text messages take up and the loss of money consumers paid to their wireless carriers for the receipt of such calls and/or text messages. Furthermore, the calls and/or text messages interfered with Plaintiff's and the other Class members' use and enjoyment of their cellular telephones, including the related data, software, and hardware components. Defendant also caused substantial injury to their phones by causing wear and tear on their property, consuming battery life, and appropriating cellular data and minutes.

4. The TCPA was enacted to protect consumers from unsolicited telephone calls and text messages like those alleged in this case. In response to Defendant's unlawful conduct, Plaintiff files the instant lawsuit and seeks an injunction requiring Defendant to cease all unsolicited telephone calling and text messaging activity to consumers as complained of herein and an award of statutory damages to the members of the Classes under the TCPA, together with costs and reasonable attorneys' fees.

## PARTIES

5. Plaintiff David Van Elzen is a natural person and citizen of the State of Wisconsin, residing in the City of Tomahawk.

6. Defendant MobileHelp, LLC is a corporation organized and existing under the laws of the State of Delaware with headquarters located at 3701 FAU Boulevard, Suite 300, in Boca Raton, Florida 33431.<sup>2</sup> MobileHelp, LLC is formerly known as Integrity Tracking, LLC.<sup>3</sup>

## JURISDICTION AND VENUE

7. This Court has federal subject matter jurisdiction under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, which is a federal statute.

8. The Court has personal jurisdiction over Defendant because it solicits significant business in this District, has entered into business to business contracts in this District and the unlawful conduct of unsolicited text messages and calls occurred in and/or was directed to this District.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendant does business in this District and the causes of action arose, in substantial part, in this District. Venue is additionally proper as Defendant resides in this District.

## COMMON FACTUAL ALLEGATIONS

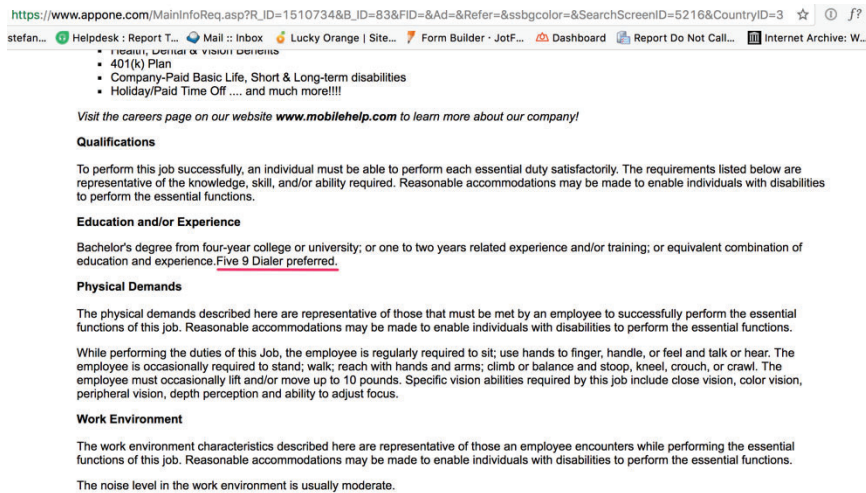
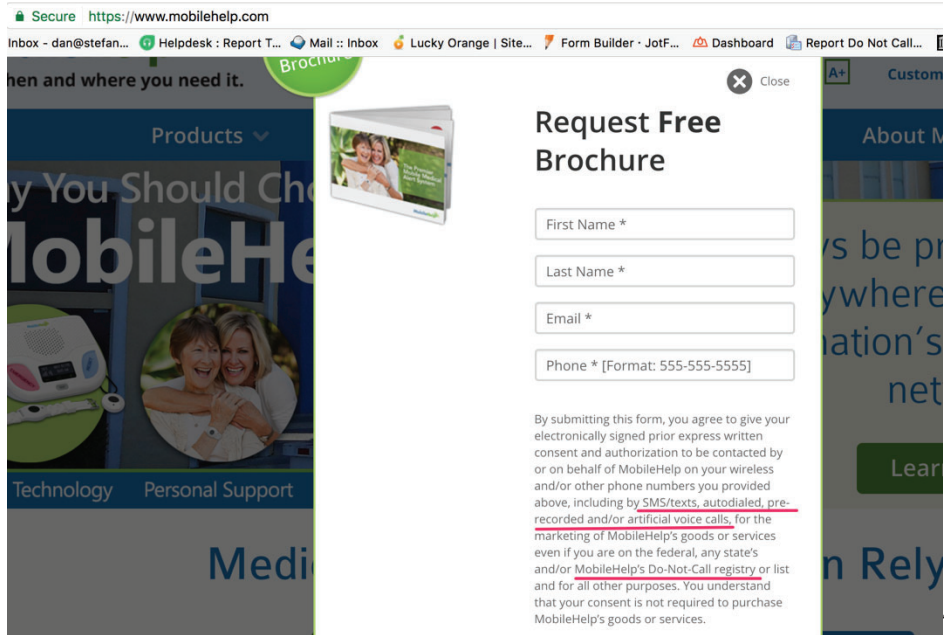
10. Defendant contacts consumers using autodialing technology and prerecorded messages in an effort to solicit consumers into utilizing and/or purchasing its medical products

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<sup>2</sup><http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=INTEGRITYTRACKING%20M080000016580&aggregateId=forl-m08000001658-c89fbab4-e237-484b-b0cb-ad4359eae7d7&searchTerm=integrity%20tracking&listNameOrder=INTEGRITYTRACKING%20M080000016580>

<sup>3</sup> <https://www.corporations.pa.gov/search/corptest>.

and/or services, as shown below.



<sup>4</sup> This image reads, “By submitting this form, you agreed to give your electronically signed prior express written consent and authorization to be contacted by or on behalf of MobileHelp on your wireless and/or other phone numbers you provided above, including by *SMS/texts, autodialed, pre-recorded and/or artificial voice calls for the marketing of MobileHelp’s goods or services even if you are on the federal, any state’s and/or MobileHelp’s Do-Not-Call registry* or list and for all other purposes ... (emphasis added).

<sup>5</sup> This image refers to a “Five 9 Dialer” which Five 9 claims “is an automated telephone dialing system that enables call centers and agents to dramatically increase their number of live connections. See <http://www.five9.com/products/virtual-contact-center/predictive-dialer>.

11. In Fact, on one of Mobile Help’s job postings they list under their Education and/or Experience section that “Five 9 Dialer preferred.”<sup>6</sup> Five9 is a cloud contact center software that provides for predictive dialer capabilities.<sup>7</sup>

12. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

13. Text messages, like the ones sent in the instant action, are considered calls under the TCPA. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (July 3, 2003); *see also Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 954 (9th Cir. 2009) (noting that text messaging is a form of communication used primarily between telephones and is therefore consistent with the definition of a “call”).

14. Yet in violation of the FCC’s rule, Defendant fails to obtain any prior express written consent to send these prerecorded phone calls and autodialed text messages to cellular telephone numbers.

15. Consumer complaints about Defendant’s invasive and repetitive calls and text messages are legion. As a sample, consumers have complained as follows:

- I keep receiving solicitation calls and mail from MobileHelp even though I asked them to quit. I called and they were very rude when I said stop. I made the mistake of contacting MobileHelp for a price quote. I called them a few days

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<sup>6</sup>

[https://www.appone.com/MainInfoReq.asp?R\\_ID=1510734&B\\_ID=83&FID=&Ad=&Refer=&sbgcolor=&SearchScreenID=5216&CountryID=3](https://www.appone.com/MainInfoReq.asp?R_ID=1510734&B_ID=83&FID=&Ad=&Refer=&sbgcolor=&SearchScreenID=5216&CountryID=3)

<sup>7</sup> <http://www.five9.com/products/virtual-contact-center/predictive-dialer>

later and told them I had picked another company. I have gotten numerous telephone calls/solicitation mailings from them for many months. When I called them again and told them to quite harassing me they were quite rude.<sup>8</sup>

- Called my mobile phone to sell mobile alert. Claimed to be rated well by BBB. Hung up when I told her I would not give credit card on phone. Spam call to mobile to sell questionable product. Wanted credit card number on phone without security or ID ...<sup>9</sup>
- This number calls me from a business called “Mobile Help” which are health emergency pendants and wrist item that know your medical conditions, summon medical or other emergency help such as falling and cannot get up.<sup>10</sup>

16. In sending the text messages that form the basis of this Complaint, Defendant utilized an automatic telephone dialing system (“ATDS”) in violation of the TCPA. Specifically, the hardware and software used by Defendant has the capacity to generate and store random numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion without human intervention. Defendant’s automated dialing equipment also is, or includes features substantially similar to, a predictive dialer, meaning that it is capable of making/sending numerous phone calls/texts simultaneously and automatically connecting answered calls to then available callers and disconnecting the rest (all without human intervention).

17. Furthermore, Defendant calls and texts customers who have no “established business relationship” with Defendant and who are registered on the Do Not Call Registry.

18. When placing these solicitation calls and sending these solicitation text messages to consumers, Defendant failed to obtain prior express written consent as required by the TCPA from cellular telephone owners/users to make such calls and send such text messages.

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<sup>8</sup> <http://bbb.org/south-east-florida/business-reviews/medical-alarms/mobilehelp-in-boca-raton-fl-92017186/reviews-and-complaints?section=complaints>.

<sup>9</sup> *Id.*

<sup>10</sup> <https://800notes.com/Phone.aspx/1-561-347-6255>.

19. Finally, even when consumers try to opt out of future calls and text messages by requesting to never be contacted again, Defendant continues to call and text them.

20. Defendant knowingly made and sent (and continues to make and send) telemarketing calls and text messages without the prior express written consent of the recipients and knowingly continues to call and/or text message them after requests to stop. As such, Defendant not only invaded the personal privacy of Plaintiff and other members of the putative Classes but also intentionally and repeatedly violated the TCPA.

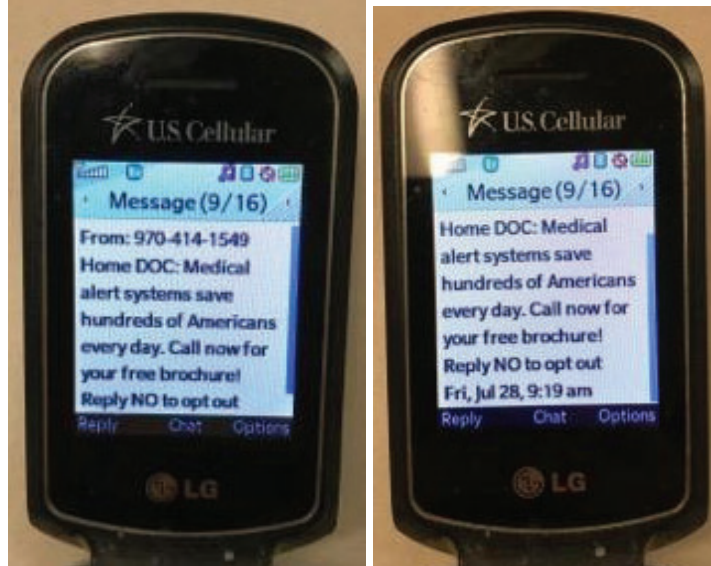
#### **FACTS SPECIFIC TO PLAINTIFF DAVID VAN ELZEN**

21. On June 10, 2011, Van Elzen's cellular telephone number was registered on the National Do Not Call Registry to avoid receiving unsolicited telemarketing calls and text messages on his cellular telephone.

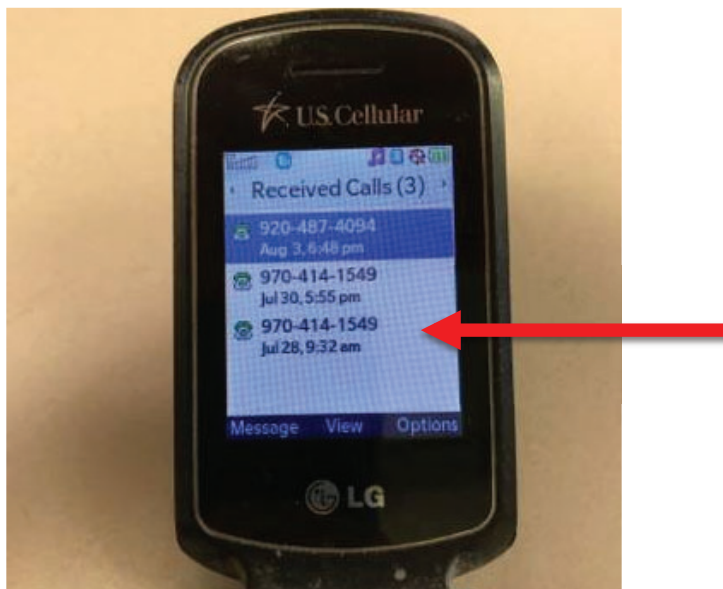
22. Van Elzen started received a series of harassing telemarketing calls and text messages from MobileHelp in or around July of 2017 (and more than 30 days after his number was registered on the National Do Not Call Registry) from telephone number 970-414-1549.

23. MobileHelp owns, operates, controls, or otherwise utilizes the telephone number 970-414-1549.

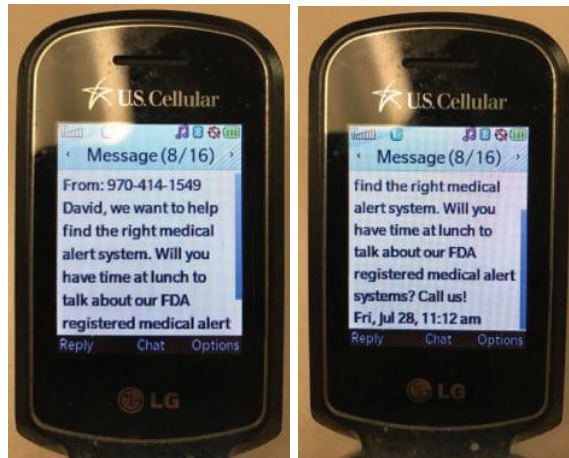
24. Van Elzen received the first text message from MobileHelp on July 28, 2017 at 9:19 a.m. from 970-414-1549 that read, "Home DOC: Medical alert systems save hundreds of Americans every day. Call now for your free brochure! Reply NO to opt out."



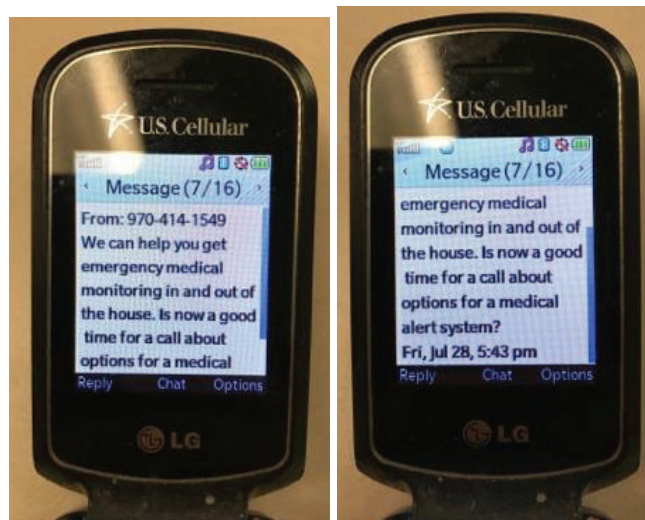
25. MobileHelp then called Van Elzen from the same telephone number just thirteen minutes later at 9:32 a.m. from 970-414-1549 using a prerecorded voice. Van Elzen answered, and, for the purpose of getting the calls and text messages to stop, Van Elzen waited on the line long enough to be connected to a live representative. Once connected to MobileHelp’s live representative, “Ron,” Van Elzen demanded that Ron remove his name from MobileHelp’s contacts list and informed Ron that he was the National Do Not Call Registry.



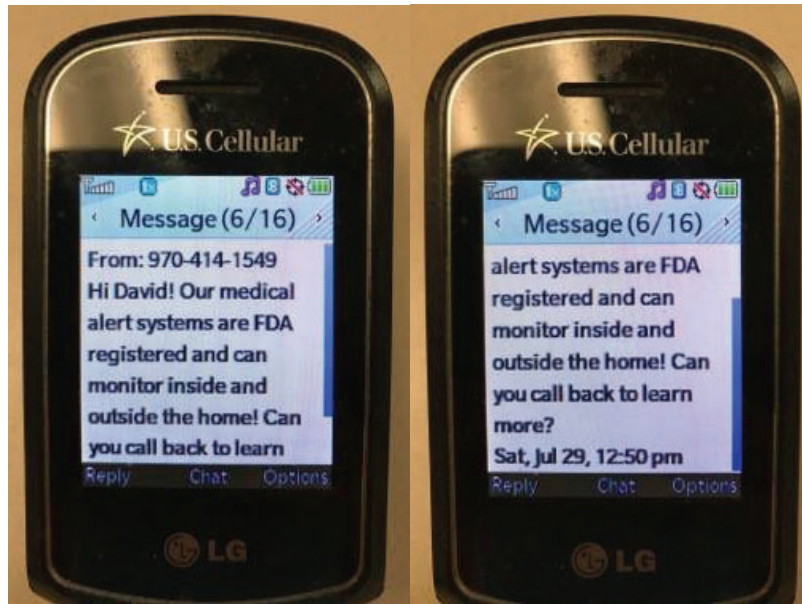
26. However, forty minutes later, MobileHelp sent Van Elzen another text message at 11:12 a.m. from 970-414-1549 that read, “David, we want to help find the right medical alert system. Will you have time at lunch to talk about our FDA registered medical alert systems? Call us!”



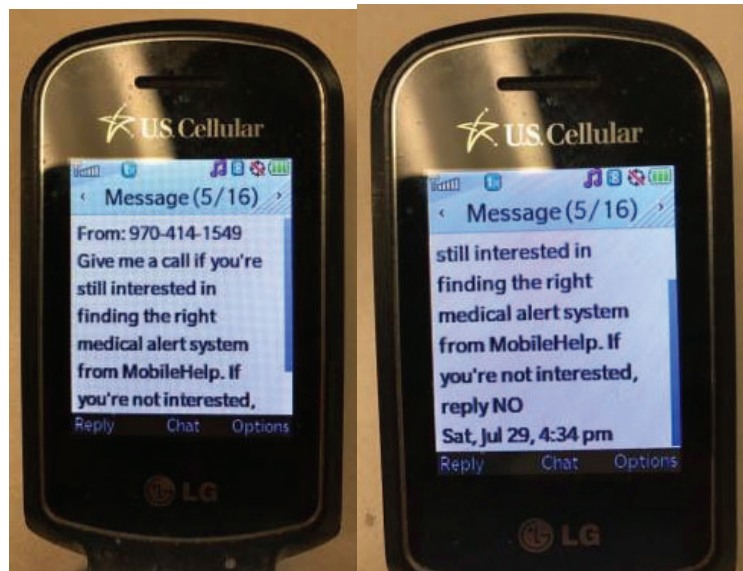
27. Later that day at 5:43 p.m., Van Elzen received another text messages from MobileHelp using phone number 970-414-1549 that read, “We can help you get emergency medical monitoring in and out of the house. Is now a good time for a call about options for a medical alert system?”



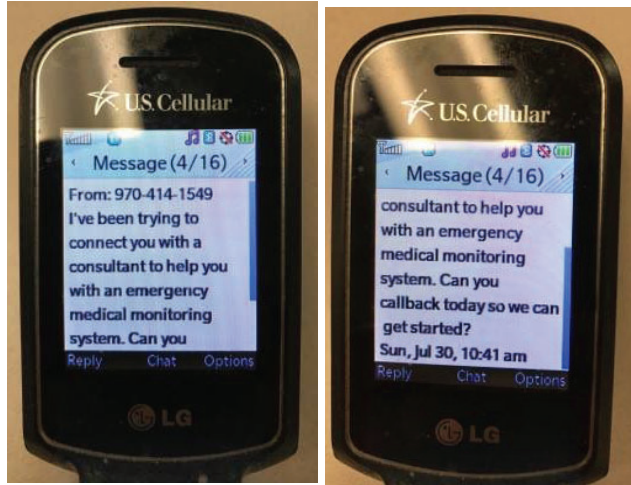
28. The next day, on July 29, 2017 at 12:50 p.m., Van Elzen received another text message from MobileHelp using phone number 970-414-1549 that read, “Hi David! Our medical alert systems are FDA registered and can monitor inside and outside the home! Can you call back to learn more?”



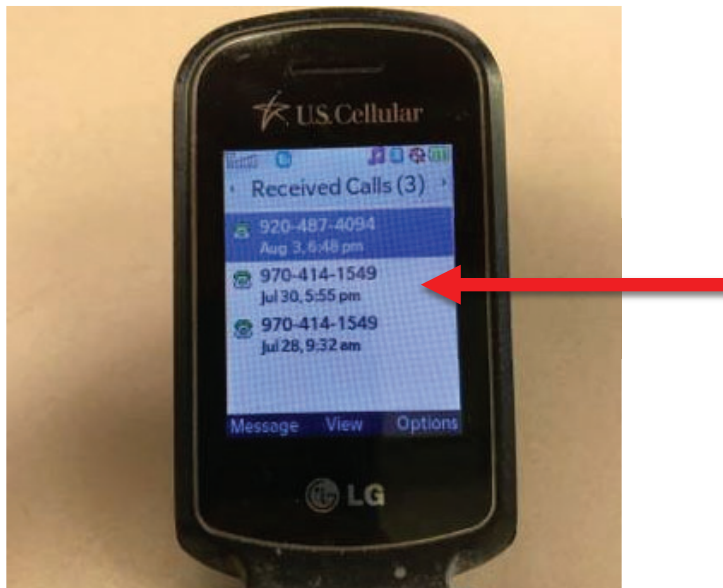
29. MobileHelp text-messaged Van Elzen again approximately four hours later that day, at 4:34 p.m. from 970-414-1549 that read, “Give me a call if you’re still interested in finding the right medical alert system from MobileHelp. If you’re not interested, reply NO.”



30. On July 30, 2017, at 10:41 a.m., MobileHelp text messaged Van Elzen using phone number 970-414-1549: “I’ve been trying to connect you with a consultant to help you with an emergency medical monitoring system. Can you callback today so we can get started?”

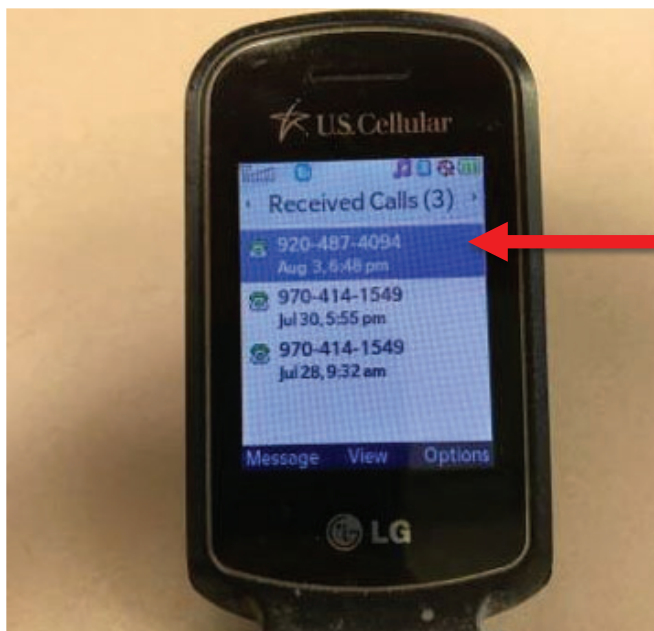


31. Despite Van Elzen’s request for MobileHelp to stop contacting him, he received a second prerecorded call from Defendant using phone number 970-414-1549 on July 30, 2017 at 5:55 p.m.



32. On August 3, 2017 at 6:48 p.m. Van Elzen received what sounded like a live telephone call on his cellular telephone from MobileHelp using phone number 920-487-4094.

The agent on the phone said that he was following up on a request for information, and that he was calling from MobileHelp. Van Elzen replied explaining that he never requested information and asked where MobileHelp got his information from. The agent replied that he couldn't identify the source, and said he would put Van Elzen on their internal do not call list.



33. As shown, despite Van Elzen's request for MobileHelp to stop contacting him, MobileHelp continued to contact him using automated dialing technology and/or prerecorded or artificial voices during all relevant times.

34. Van Elzen never consented in writing or otherwise to receive prerecorded telephone calls and text messages on his cellular telephone from MobileHelp.

35. Van Elzen does not have a relationship with MobileHelp, has never provided his telephone number to MobileHelp, and has never requested that MobileHelp place calls to him or send him text messages or offer its services. Simply put, Van Elzen has never provided any form of prior express written consent to MobileHelp to place calls to him and/or send him text messages and has no business relationship with MobileHelp.

36. MobileHelp at all times is and was aware that the above-described prerecorded telephone calls and autodialed text messages were and are being made to consumers like Van Elzen who had not consented to receive them; whose telephone numbers have been registered with the National Do Not Call Registry; and who requested that MobileHelp cease contacting them.

37. By making unauthorized prerecorded calls and autodialed text messages to consumer's cellular telephones as alleged herein, MobileHelp has caused consumers actual, concrete harm and annoyance. In the present case, a consumer could be subjected to many unsolicited prerecorded telephone calls and text messages, as MobileHelp's opt-out system does not work.

38. In order to redress these injuries, Plaintiff, on behalf of himself and the Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited prerecorded and/or autodialed telephone calls and text messages to cellular telephones.

39. On behalf of the Classes, Plaintiff seeks an injunction requiring MobileHelp to cease all unauthorized prerecorded telephone calling and text messaging activities, declaratory relief establishing that MobileHelp's calls violated the TCPA, and an award of statutory damages to the class members, together with costs and reasonable attorneys' fees.

#### **CLASS ALLEGATIONS**

40. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(a), (b)(2), and (b)(3) on behalf of himself and four Classes defined as follows:

**Prerecorded No Consent Class:** All persons in the United States who from four years prior to the filing of the initial complaint in this action to the present: (1) Defendant (or a third person acting on behalf of Defendant) called; (2) on the person's telephone number; (3) for the purpose of marketing Defendant's

products and services; and (4) for whom Defendant claims it obtained prior express written consent in the same manner as Defendant claims it obtained prior express written consent to call the Plaintiff.

**Text Message No Consent Class**: All persons in the United States who from four years prior to the filing of the initial complaint in this action to the present: (1) Defendant (or a third person acting on behalf of Defendant) texted; (2) on the person's cellular telephone number; (3) for the purpose of marketing Defendant's products and services; and (4) for whom Defendant claims it obtained prior express written consent in the same manner as Defendant claims it obtained prior express written consent to text the Plaintiff.

**Stop Call Class**: All persons in the United States who from four years prior to the filing of the initial complaint in this action to the present: (1) Defendant (or a third person acting on behalf of Defendant) called and/or text messaged, (2) on the person's cellular telephone number, (3) for the purpose of marketing Defendant's products and services, (4) after the person informed Defendant that s/he no longer wished to receive calls and/or text messages from Defendant.

**Do Not Call Registry Class**: All persons in the United States who (1) Defendant (or a third person acting on behalf of Defendant) called and/or text messaged more than one time on his/her cellular telephone; (2) within any 12-month period (3) where the cellular telephone number had been listed on the National Do Not Call Registry for at least thirty days; (4) for the purpose of marketing Defendant's products and services; and (5) for whom Defendant claims it obtained prior express consent in the same manner as Defendant claims it obtained prior express consent to call the Plaintiff.

41. The following people are excluded from the Classes: any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Classes; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons. Plaintiff anticipates the potential need to amend the Class Definitions

following the completion of class discovery regarding the size and scope of the Classes and the manner by which Defendant claims it obtained prior express consent, oral or written.

42. **Numerosity:** The exact sizes of the Classes are unknown and not available to Plaintiff at this time, but individual joinder is impracticable. On information and belief, Defendant made prerecorded telephone calls and sent text messages to thousands of consumers who fall into the definition of the Classes. Members of the Classes can be easily identified through Defendant's records and by reference to other objective criteria.

43. **Commonality:** There are several questions of law and fact common to the claims of Plaintiff and the Classes on which every Class member's claim will either succeed or fail, and which will be proven using common evidence. Such common questions for the Classes include, without limitation:

- (a) Whether Defendant's conduct violated the TCPA;
- (b) Whether Defendant systematically made prerecorded telephone calls and/or sent text messages to individuals who did not provide Defendant and/or its agents with their prior express written consent to receive such phone calls and/or text messages;
- (c) Whether Defendant made and/or sent the calls and/or text messages with the use of an ATDS;
- (d) Whether Defendant systematically made multiple telephone calls and/or text messages within the same 12-month period to consumers who telephone numbers were registered with the National Do Not Call Registry;
- (e) Whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct; and

(f) Whether Defendant systematically made telephone calls and/or sent text messages to consumers after they explicitly asked not to be contacted by Defendant.

44. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Classes. Plaintiff is a member of the Classes, and if Defendant violated the TCPA to call Plaintiff then it violated the TCPA to call the other Class members. Plaintiff and the Classes sustained damages as a result of Defendant's uniform wrongful conduct during transactions with Plaintiff and the Classes.

45. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff.

46. **Policies Generally Applicable to the Classes:** This class action is appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes as respective wholes, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Class members, and making final injunctive relief appropriate with respect to the Classes as respective wholes. Defendant's practices challenged herein apply to and affect the Class members uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as respective wholes, not on facts or law applicable only to Plaintiff.

47. **Predominance:** The common questions of law and fact set forth above predominate over any individual issues. Whether Defendant properly obtained prior express written consent to call and whether Defendant used an ATDS go to the very heart of the case and

are facts on which all class members' claims hinge. As such, the common issues predominate over any supposed individualized issues.

48. **Superiority and Manageability:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable. The damages suffered by the individual members of the Classes will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Classes to obtain effective relief from Defendant's misconduct. Even if members of the Classes could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort and expense will be fostered and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION**

**Violation of 47 U.S.C. § 227 *et seq.***

**(On behalf of Plaintiff and the Prerecorded No Consent Class)**

49. Paragraphs 1-48 are re-alleged and incorporated by reference herein.

50. Defendant made unwanted prerecorded solicitation telephone calls to telephone numbers belonging to Plaintiff and the other members of the Prerecorded No Consent Class—without their prior express written consent.

51. Defendant's calls were made for the purpose of marketing Defendant's business and services.

52. At no time did Defendant obtain prior express written consent that disclosed to the called party that the called party consented to be called with an automatic telephone dialing system or pre-recorded voice or that providing such consent was not a condition (direct or indirect) of any purchase of any goods or services.

53. By making unsolicited prerecorded telephone calls to Plaintiff and members of the Prerecorded No Consent Class's cellular telephones without prior express written consent, and by utilizing an ATDS, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

54. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Prerecorded No Consent Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls/text messages on their cellular telephones and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

55. In the event that the Court determines that Defendant's conduct was willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Prerecorded No Consent Class.

**SECOND CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227 *et seq.***  
**(On behalf of Plaintiff and the Text Message No Consent Class)**

56. Paragraphs 1-48 are re-alleged and incorporated by reference herein.

57. Defendant sent unwanted solicitation text messages to telephone numbers belonging to Plaintiff and the other members of the Text Message No Consent Class—without their prior express written consent.

58. Defendant's text messages were made for the purpose of marketing Defendant's business and services.

59. At no time did Defendant obtain prior express written consent that disclosed to the texted party that said party consented to be sent a text message from Defendant with an automatic telephone dialing system or pre-recorded voice or that providing such consent was not a condition (direct or indirect) of any purchase of any goods or services.

60. Further, Defendant sent the text messages using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*. Defendant utilized equipment that sent the text messages to Plaintiff and other members of the Text Message No Consent Class simultaneously and without human intervention.

61. By sending unwanted solicitation text messages to Plaintiff and members of the Text Message No Consent Class's cellular telephones without prior express written consent, and by utilizing an ATDS, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

62. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Text Message No Consent Class suffered actual damages in the form of monies paid to receive the unsolicited text messages on their cellular telephones and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

63. In the event that the Court determines that Defendant's conduct was willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Text Message No Consent Class.

**THIRD CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227 *et seq.***  
**(On behalf of Plaintiff and the Stop Call Class)**

64. Paragraphs 1-48 are re-alleged and incorporated by reference herein.

65. Defendant made unsolicited and wanted telemarketing calls and sent unwanted solicitation text messages to telephone numbers belonging to Plaintiff and the other members of the Stop Call Class on their cellular telephone *after* the person had informed Defendant that he or she no longer wished to receive such calls and/or text messages from Defendant.

66. Defendant sent the text messages using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or receive and store lists of phone numbers, and to dial such numbers, *en masse*.

67. By making unsolicited telephone calls and sending unsolicited text messages to Plaintiff and members of the Stop Call Class's cellular telephones after they requested to no longer receive calls and/or text messages, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by continuing to call and/or text them without their prior express written consent.

68. As a result of Defendant's unlawful conduct, Plaintiff and the members of the Stop Call Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls/text messages on their cellular telephones and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

69. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Stop Call Class.

#### **FOURTH CAUSE OF ACTION**

#### **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (On behalf of Plaintiff and Do Not Call Registry Class)**

70. Paragraphs 1-48 are re-alleged and incorporated by reference herein.

71. The TCPA, specifically 47 U.S.C. § 227(c), provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.

72. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o 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 of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

73. 47 C.F.R. § 64.1200(e), in turn, provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission’s Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.’” (the “Report and Order”).

74. And the Report and Order thereafter states as follows:

The Commission’s rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For the reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.<sup>11</sup>

75. 47 C.F.R. § 64.1200(d) provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing

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<sup>11</sup> 68 Fed. Reg. 44143, 44166 (July 25, 2003).

calls made by or on behalf of that person or entity. The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) 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. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request . . . .

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

76. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, multiple telephone solicitations within a 12-month period to wireless telephone subscribers such

as Plaintiff and the Do Not Call Registry Class members, who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls and/or text messages from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

77. Defendant made and/or sent more than one unsolicited telephone call and/or text message to Plaintiff and members of the Do Not Call Registry Class within a 12-month period without their prior express written consent to receive such calls. Plaintiff and members of the Do Not Call Registry Class never provided any form of consent to receive telephone calls from Defendant, and/or Defendant does not have a current record of consent to place telemarketing calls to them.

78. Defendant also violated 47 C.F.R. § 64.1200(d) by initiating calls and/or text messages for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the Do Not Call Registry Class, without instituting procedures that comply with the regulatory minimum standards for having a written policy, available on demand, for maintaining a list of persons who request not to receive telemarketing calls from them, without training its employees or personnel in the use of any such internal do not call list, and in not recording and honoring do not call requests made by consumers.

79. Defendant further violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call/text message in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.

80. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled,

*inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by Plaintiff and the members of the Do Not Call Registry Class.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff David Van Elzen, individually and on behalf of the Classes, prays for the following relief:

81. An order certifying the Classes as defined above, appointing Plaintiff as the representative of the Classes and appointing his counsel as Class Counsel;

82. A declaratory judgment declaring that Defendant's prerecorded calls and autodialed text messages violated the TCPA, that Defendant's equipment constitutes an automatic telephone dialing system under the TCPA, that Defendant failed to obtain prior express written consent to call and/or text message Plaintiff or any of the Class members, that Defendant failed to maintain an internal Do Not Call list and to train its personnel engaged in telemarketing in the existence and use of such a list, and that Defendant failed to honor stop-call requests to Plaintiff and the members of the Stop Call Class;

83. An award of actual and statutory damages, to be trebled in the event the Court finds that Defendant has acted knowingly and willfully, to be paid into a common fund for the benefit of the Class Members;

84. An injunction requiring Defendant and its agents to cease all unsolicited telephone calling and unsolicited text-messaging activities, to honor do not call requests, to provide a domestic number for opting out, and otherwise protecting the interests of the Classes;

85. An injunction prohibiting Defendant from using, or contracting the use of, an automatic telephone dialing system or prerecorded voice without obtaining, and maintaining records of, call recipient's prior express written consent to receive calls and/or text messages made with such equipment;

86. An injunction prohibiting Defendant from contracting with any third-party for marketing purposes until it establishes and implements policies and procedures for ensuring the third-party's compliance with the TCPA;

87. An injunction prohibiting Defendant from conducting any future telemarketing activities until it has established an internal Do Not Call List as required by the TCPA and trained its employees in the existence and use of its internal Do Not Call list;

88. An award of reasonable attorneys' fees and costs to be paid from the common fund; and

89. Such other and further relief that the Court deems reasonable and just.

### **JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: August 23, 2017

**DAVID VAN ELZEN**, individually and on behalf  
of all others similarly situated,

By: s/Stefan Coleman  
One of Plaintiff's Attorneys

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Attorneys for Plaintiff and the putative Classes

# **EXHIBIT F**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**DAVID VAN ELZEN**, individually, and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**EDUCATOR GROUP PLANS,  
INSURANCE SERVICES, INC.**, a Texas  
company,

*Defendant.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Educator Group Plans, Insurance Services, Inc. d/b/a/ Equita Final Expense Services (“EFES” or “Defendant”) to stop EFES from violating the Telephone Consumer Protection Act by making unsolicited, prerecorded calls and sending unsolicited, autodialed text messages to consumers, and to obtain injunctive and monetary relief for all persons injured by EFES’s conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**INTRODUCTION**

1. EFES sells products and services primarily for insurance agents that, among other things, provides insurance agents and other salespeople products to sell and leads to sell them to.<sup>1</sup>

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<sup>1</sup> <https://www.theequitagroup.com/our-story>

2. EFES uses telemarketing in order to market and sell their products and services to insurance agents and other salespeople throughout the U.S.

3. In order to reach more potential agents, EFES places prerecorded calls and sends autodialed text messages to consumers that have not provided consent to receive such calls or text messages.

4. In Plaintiff's case, EFES placed more than 5 unsolicited, prerecorded marketing calls, and sent 8 unsolicited, autodialed marketing text messages to his cellular phone, despite Plaintiff having never given EFES consent to contact him.

5. In response to these calls and text messages, Plaintiff files this lawsuit seeking injunctive relief, requiring Defendant to cease placing unsolicited prerecorded voice calls and sending unsolicited text messages to consumers, as well as an award of statutory damages to the members of the Classes and costs.

### **PARTIES**

6. Plaintiff Van Elzen is a Menasha, Wisconsin resident.

7. Defendant EFES is a Texas company headquartered in Richardson, Texas.

Defendant conducts business throughout this District and throughout the United States.

### **JURISDICTION AND VENUE**

8. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA").

9. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant does significant business in this District and the state of Wisconsin, and directed its prerecorded voice calls and text messages to Plaintiff here.

## COMMON ALLEGATIONS

### **EFES Markets its Services by Placing Prerecorded Voice Calls and Sending Autodialed Text Messages to Consumers' Cellular Phone Numbers Without Consent**

10. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded [solicitation] calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

11. Yet in violation of this rule, Defendant fails to obtain any express written consent prior to placing prerecorded solicitation calls, and sending autodialed text messages to consumers such as Plaintiff.

12. In placing the calls/texts that form the basis of this Complaint, Defendant utilized an automatic telephone dialing system (“ATDS” or “autodialer”) in violation of the TCPA. Specifically, the hardware and software used by Defendant has the capacity to generate and store random numbers, and/or receive and store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated fashion without human intervention.

13. Not surprisingly, there is a plethora of online complaints about Defendant’s prerecorded calls to consumers who never gave consent to be called:

- “just called I am on the do not call – I will have to sue!”<sup>2</sup>
- “robot dialer”<sup>3</sup>
- “robo call offering insurance job”<sup>4</sup>
- “calls cell phone”<sup>5</sup>
- “Company trying to sell licensed insurance agents their services. SCAM.”<sup>6</sup>
- “insurance recruiter robo call”<sup>7</sup>

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<sup>2</sup> <https://800notes.com/Phone.aspx/1-813-703-8390>

<sup>3</sup> *id*

<sup>4</sup> <https://www.shouldianswer.com/phone-number/4405844575>

<sup>5</sup> *id*

<sup>6</sup> <https://www.whitepages.com/phone/1-972-656-3779>

<sup>7</sup> *id*

- “Automated”<sup>8</sup>
- “Recruiting life insur agents..”<sup>9</sup>
- “Unsolicited call”<sup>10</sup>
- “Recorded message for Equitable life insurance final expense products.”<sup>11</sup>

14. EFES owns, operates, and/or utilizes telephone numbers 704-422-8225, 972-656-3779, 440-584-4575 and 813-703-8390. When any of the these phone numbers is called, the same prerecorded message plays identifying the company as EFES.<sup>12</sup>

### PLAINTIFF’S ALLEGATIONS

#### **EFES Called Plaintiff Using a Prerecorded Voice Message and Sent Him Autodialed Text Messages to His Cell Phone Number**

15. At the beginning of 2018, Plaintiff started receiving unsolicited prerecorded voice message calls from Defendant promoting EFES’s products and services for insurance agents.

16. The prerecorded voice messages stated: *“You see ads for better commissions and wonder why you don't have them[.] Are you producing 10000 or more in monthly premium and still feel like you can't make ends meet are you trying to offer a 1 size fits all policy to a diverse clientele interested in building a team but only getting empty promises in return what if there was a better way what if agents that used to be in the same spot you were in could help guide your career in helping more seniors spending less money on leads while showing you how to make more money and grow it seem press 1 and a representative will call you shortly press 2 and you'll be removed from this list.”*<sup>13</sup>

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<sup>8</sup> *id*

<sup>9</sup> *id*

<sup>10</sup> <https://www.shouldianswer.com/phone-number/7044228225>

<sup>11</sup> *id*

<sup>12</sup> <https://powerhr.com/coverage-area/>

<sup>13</sup> Another consumer recorded the prerecorded message they heard when answering a call from EFES. This is the same message that Plaintiff heard. <https://www.nomorobo.com/lookup/440-584-4575>.

17. Defendant placed unsolicited prerecorded voice calls to Plaintiff over a period of approximately 6 months using phone numbers 704-422-8225, 972-656-3779, 440-584-4575 and 813-703-8390.

18. On June 6, 2018, Plaintiff communicated with an agent using the chat option featured on <http://www.efesonline.com> and made it clear that he wanted the calls to stop. Then, to ensure the calls would stop, Plaintiff sent the following email to the same EFES agent that he chatted with online, making it clear that EFES was not permitted to call his cellular phone number again:



David Van Elzen <[redacted]>

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**Re: Solicitation calls**

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**Ryan Caras** <r.caras@theequitagroup.com>  
To: David Van Elzen <[redacted]>  
Cc: EFES Marketing <EFESMarketing@theequitagroup.com>

Wed, Jun 6, 2018 at 3:18 PM

Already removed you

Thanks,

Ryan

Sent from my iPhone

On Jun 6, 2018, at 3:18 PM, David Van Elzen <davidvanelzen@gmail.com> wrote:

Dear EFES,

I have received solicitation calls from the following numbers:  
704-422-8225, 972-656-3779, 440-584-4575 and 813-703-8390. I just finished an online chat with Ryan to have my phone number removed. Please confirm I will receive no further calls.

Thank you,

David Van Elzen

[redacted]  
Menasha, WI. 54952

[redacted] Cell  
[redacted] Fax



19. Despite Plaintiff making it clear that he wanted the calls to stop, approximately one month later, Plaintiff received a series of 8 unsolicited autodialed text messages to his cellular phone from Defendant:

- i) July 9, 2018 @ 8:59 AM from 474747 – “David, it’s time to talk Medicare. Join us at 10 AM CST for your Monday dose of Medicare with Peter Walker! 206-402-0100, 149036# To op-out of EFES te”
- ii) July 9, 2018 @ 9:00 AM from 474747 – “xt alerts, reply with STOP. If you change your mind and would like to still received EFES text alerts, please text EZJCM34548 to 474-747.”
- iii) July 9, 2018 @ 9:55 AM from 474747 – “David, it’s time to dial in, Medicare Monday is GOING LIVE in 5 minutes! 206-402-0100, 149036# To opt-out of EFES text alerts, reply with STOP. If you”
- iv) July 9, 2018 @ 9:55 AM from 474747 – “change your mind and would like to still received EFES text alerts, please text EZJCM34548 to 474-747.”
- v) July 10, 2018 @ 9:00 AM from 474747 – “David, did you know that the more you focus on the value of your product, the less important the price becomes? Join Cole McCoy as he talks “Selling Val””
- vi) July 10, 2018 @ 9:00 AM from 474747 – “ue Over Price”. 206-402-0100, 149036# To op-out of EFES tex”
- vii) July 10, 2018 @ 9:00 AM from 474747 – “xt alerts, reply with STOP. If you change your mind and would like to still received EFES text alerts, please text EZJCM34548

to 474-747. [https://eztxt.s3-us-west-.amazonaws.com/451515/mms/Plug%20and%20Learn%207.10.18\\_1531229745.png](https://eztxt.s3-us-west-.amazonaws.com/451515/mms/Plug%20and%20Learn%207.10.18_1531229745.png)<sup>14</sup>

viii) July 10, 2018 @ 9:55 AM from 474747 – “It’s time, David! Start dialing...206-402-0100, 149036#”

20. On July 10<sup>th</sup>, shortly after receiving the 8<sup>th</sup> text message, Plaintiff sent “Stop” to 474747. He immediately received confirmation that he was unsubscribed on behalf of EZTexting.

21. Plaintiff does not have a relationship with EFES or any of its affiliated companies, and has never consented to any contact from Defendant.

22. Simply put, EFES did not obtain Plaintiff’s prior express written consent to place prerecorded solicitation calls, or send autodialed text messages to him on his cellular phone.

23. The unauthorized calls and text messages made by EFES, as alleged herein, have harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Plaintiff’s use and enjoyment of his phone, in addition to the wear and tear on the phones’ hardware (including the phones’ battery) and the consumption of memory on the phone.

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<sup>14</sup> The link provided in the text message bring up the following image:



24. Seeking redress for these injuries, Van Elzen, on behalf of himself and Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited prerecorded voice message calls, and unsolicited autodialed text messages.

### CLASS ALLEGATIONS

#### **Class Treatment Is Appropriate for Plaintiff's TCPA Claims Arising From Calls Made by EFES Agents**

25. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of the following three Classes:

**Prerecorded No Consent Class:** All persons in the United States who from four years prior to the filing of this action through the present (1) Defendant (or an agent acting on behalf of Defendant) called, (2) using a prerecorded voice message, (3) without consent.

**Autodialed No Consent Class:** All persons in the United States who from four years prior to the filing of this action through the present (1) Defendant (or an agent acting on behalf of Defendant) called, (2) on the person's cellular telephone number, (3) using an automated telephone dialing system, (4) without consent.

**Autodialed Stop Class:** All persons in the United States who from four years prior to the filing of this action through the present (1) Defendant (or an agent acting on behalf of Defendant) called, (2) on the person's cellular telephone, (3) using an automated telephone dialing system, (4) after the person informed Defendant that s/he no longer wished to receive calls from Defendant.

26. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated

and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

27. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable.

28. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

- (a) Whether Defendant utilized a prerecorded voice message when making its calls to Plaintiff and the members of the Classes;
- (b) whether Defendant utilized an automatic telephone dialing system to send its text messages to Plaintiff and the members of the Classes;
- (c) whether Defendant made prerecorded telephone calls and sent autodialed text messages to Plaintiff and members of the Classes without first obtaining prior express written consent to make the calls;
- (d) whether Defendant sent autodialed text messages to Plaintiff and members of the Classes after being told to stop calling;
- (e) whether Defendant's conduct constitutes a violation of the TCPA; and
- (f) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

29. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Classes.

30. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiffs. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Prerecorded No Consent Class)**

31. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint and incorporates them by reference.

32. Defendant and/or its agents made unsolicited calls to Plaintiff and the other members of the Prerecorded No Consent Class using a prerecorded voice message.

33. These prerecorded voice message calls were made *en masse* without the consent of Plaintiff and the other members of the Prerecorded No Consent Class to receive such calls.

34. Defendant has, therefore, violated 47 U.S.C. §§ 227(b)(1)(A) and (B). As a result of Defendant's conduct, Plaintiff and the other members of the Prerecorded No Consent Class

are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

**SECOND CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Autodialed No Consent Class)**

35. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint and incorporates them by reference.

36. Defendant and/or its agents made unwanted calls to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using an autodialer.

37. These calls were made *en masse* without the consent of Plaintiff and the other members of the Autodialed No Consent Class to receive such calls.

38. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Autodialed No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

**THIRD CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violation of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Autodialed Stop Class)**

39. Plaintiff repeats and realleges paragraphs 1 through 30 of this Complaint and incorporates them by reference.

40. Defendant and/or its agents made unwanted calls *en masse* to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed Stop Call Class after being told to stop calling/texting.

41. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Autodialed Stop Call Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff Van Elzen, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Classes; and
- e) Such further and other relief as the Court deems just and proper.

## JURY DEMAND

Plaintiff requests a jury trial.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of those similarly situated individuals

Dated: September 5, 2018

By: /s/ Stefan Coleman

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*Attorneys for Plaintiff and the putative Classes*

*\*Pro Hac Vice motion forthcoming*

# **EXHIBIT G**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**DAVID VAN ELZEN**, individually, and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**HEALTHCARE SOLUTIONS TEAM,  
LLC**, a Illinois company,

*Defendant.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Healthcare Solutions Team, LLC (“HST” or “Defendant”) to stop HST from violating the Telephone Consumer Protection Act by directing its salespeople to send unsolicited and autodialed text messages to consumers, including to consumers registered on the National Do Not Call registry, and to otherwise obtain injunctive and monetary relief for all persons injured by HST’s conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**INTRODUCTION**

1. HST is a health, dental, life and medicare supplements insurance brokerage company that does business throughout the U.S. It represents many nationwide insurance carriers such as United Healthcare, Aetna, BlueCross BlueShield and Humana.<sup>1</sup>

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<sup>1</sup> <http://www.myhst.com/>

2. In order to solicit new business, HST directs its salespeople to cold call and send unsolicited and autodialed text messages to consumers who have not given prior express written consent to receive such calls or texts, including consumers who have specifically registered with the National Do Not Call Registry (“DNC”) to avoid such unwanted calls and text messages.

3. In Plaintiff’s case, HST sent multiple unsolicited autodialed text messages to his cellular phone, despite Plaintiff having his phone number registered with the DNC to avoid such text messages.

4. In response to these text messages, Plaintiff files this class action lawsuit seeking injunctive relief, requiring Defendant to cease directing its salespeople to send unsolicited text messages to consumers’ cellular telephone numbers using an automatic telephone dialing system without consent and otherwise texting telephone numbers registered on the DNC, as well as an award of statutory damages to the members of the Classes.

### **PARTIES**

5. Plaintiff Van Elzen is a Menasha, Wisconsin resident.

6. Defendant HST is an Illinois company headquartered in Lombard, Illinois.

Defendant conducts business throughout this District, the State of Wisconsin, and throughout the United States.

### **JURISDICTION AND VENUE**

7. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

8. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant does significant business in this District,

and because the wrongful conduct giving rise to this case was directed from or into this District. Plaintiff resides in this District.

### COMMON ALLEGATIONS

#### **HST Directs Its Salespeople to Violate the TCPA by Sending Unsolicited Texts to Consumers, Including Consumers Who Are Registered on the DNC**

9. Defendant HST provides its salespeople with leads for them to call and/or text to generate sales for their company.

10. Leads are provided to the salespeople from various lead sources, some more reputable than others.

11. Several current and former salespeople have complained about receiving poor leads from HST:

- “The leads they provide you are extremely bad. In order to get sales, you have to be very friendly and know people.”<sup>2</sup>
- “Lots of cold calling on cold leads.”<sup>3</sup>
- “The company provides you with the latest software/CRM. You have access to FREE leads.”<sup>4</sup>
- “HST, there is a world of training, support and FREE leads.”<sup>5</sup>
- “You will get free leads as well as access to paid leads as well.”<sup>6</sup>

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<sup>2</sup> <https://www.indeed.com/cmp/Healthcare-Solutions-Team/reviews>

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

- “Their leads are not direct. There are a bunch of people that someone pull up from statistics book. You can get really cursed out for at least one month before finding a client.”<sup>7</sup>
- “As others have mentioned...leads provided are mediocre and overworked. You'll do best if you cold call and network.”<sup>8</sup>

12. Essentially, HST is directing its salespeople to telemarket for HST to the leads it supplies them.

13. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires “*prior express written consent* for all autodialed or prerecorded [solicitation] calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

14. Yet in violation of this rule, Defendant fails to obtain any express written consent prior to sending autodialed solicitation text messages to cellular telephone numbers such as Plaintiff’s.

15. In HST’s own press release, HST credits their success to their LeadMaster system which they claim is “the most advanced lead and client management system the industry has ever seen.”<sup>9</sup> One of the main reasons they are able to sign up so many new customers is that HST’s Leadmaster has a “fully integrated auto dialing, ***bulk texting*** and email functions.”<sup>10</sup> (emphasis

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<sup>7</sup> [https://www.glassdoor.com/Reviews/Healthcare-Solutions-Team-Insurance-Broker-Reviews-EI\\_IE425802.0,25\\_KO26,42.htm](https://www.glassdoor.com/Reviews/Healthcare-Solutions-Team-Insurance-Broker-Reviews-EI_IE425802.0,25_KO26,42.htm)

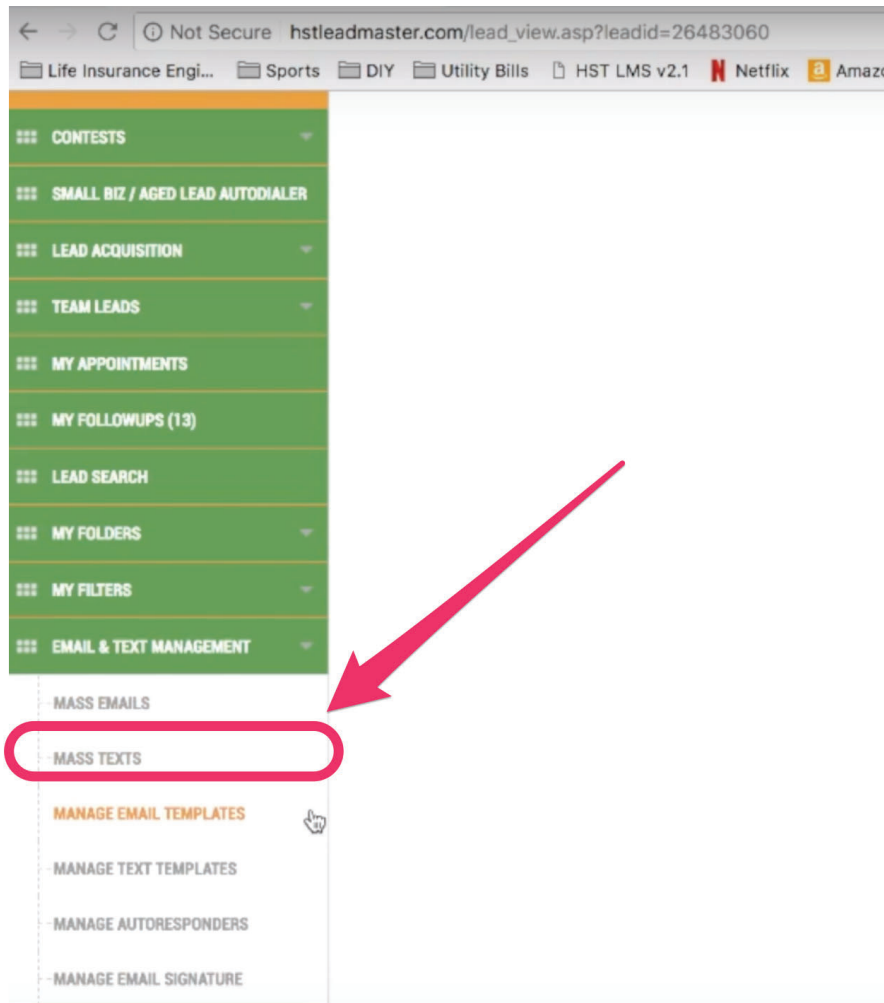
<sup>8</sup> <https://www.indeed.com/cmp/Healthcare-Solutions-Team/reviews>

<sup>9</sup> <https://www.prweb.com/releases/2013/2/prweb10442712.htm>

<sup>10</sup> *Id.*

added) HST remarked that “We have added to an already dynamic technology, which allows Healthcare Solutions Team agents to out produce any other agents in the industry.”<sup>11</sup>

16. In fact, within HST’s CRM provided to every HST agent there is a mass texting messaging option.



### PLAINTIFF’S ALLEGATIONS

#### **Plaintiff Received Unsolicited, Autodialed Text Messages to His Cell Phone Number Despite Having Registered His Phone Number on the DNC**

17. On June 10, 2011, Plaintiff’s cellular telephone number was registered on the DNC in order to avoid receiving unsolicited calls and text messages.

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<sup>11</sup> *Id.*

18. On August 7, 2018 at 10:55 am, Plaintiff received an unsolicited autodialed text message from Defendant using phone number (630) 427-4736. The text message states, “Hi David. My name is Heidi. Are you looking for health,dental or life insurance? Could I send you a quote either via text or email?”

19. Shortly thereafter, also on August 7, 2018, Plaintiff received a second unsolicited, autodialed text message from Defendant using phone number (630) 427-4736 stating, “Hi David, I am an independent broker with Healthcare Solutions Team my site: <http://hjames.myhst.com/>”

20. Plaintiff received a third autodialed text message on August 7, 2018 from Defendant using phone number (630) 427-4736 stating, “I have access to multiple carriers if you decide you would like a quote, thank you! Heidi”

21. As per the text messages, the salesperson works for Healthcare Solutions Team. Following the website link provided in the text message (<http://hjames.myhst.com/>) leads to:

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Not Secure | [hjames.myhst.com](http://hjames.myhst.com)

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Heidi James 541-331-1851



22. All of the text messages Plaintiff received were from (630) 427-4736. Upon information and research, calling (630) 427-4736 leads to an automated system that thanks the caller for calling Healthcare Solutions Team. The message then goes on to identify the address as being HST’s headquarters – 1900 South Highland Avenue #203, Lombard, IL 60148.<sup>12</sup>

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<sup>12</sup> <http://www.myhst.com/>

23. Plaintiff replied to Defendant on August 7, 2018 after receiving the third text confirming, “what is the name of your agency n do you have a website?”

24. The agent replied back at 12:47 pm on August 7, 2018 with a text message stating, “http://hjames.myhst.com/” and then, “I am a broker with Healthcare Solutions Team[.]”

25. Plaintiff does not have a relationship with HST or any of its affiliated companies, nor has he ever requested that HST call him or consented to any contact from Defendant.

26. Simply put, HST did not obtain Plaintiff’s prior express written consent to send a solicitation text message to him on his cellular telephone using an autodialer or otherwise.

27. The unauthorized text messages sent by HST, as alleged herein, have harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Van Elzen’s use and enjoyment of his phone, in addition to the wear and tear on the phones’ hardware (including the phones’ battery) and the consumption of memory on the phone.

28. Seeking redress for these injuries, Van Elzen, on behalf of himself and Classes of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed text messages to cellular telephones and unsolicited text messages to telephone numbers registered on the DNC.

### CLASS ALLEGATIONS

#### **Class Treatment Is Appropriate for Plaintiff’s TCPA Claims**

29. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following two Classes:

**Autodialed No Consent Class:** All persons in the United States who from four years prior to the filing of this action (1) Defendant (or an agent acting on behalf of Defendant) texted, (2) on the person’s cellular telephone number, (3) using substantially the same equipment used to text Plaintiff, (4) for substantially the same reason Plaintiff was texted, and (5) for whom Defendant claims (a) it obtained prior express written consent in the same manner as Defendant claims it obtained

prior express written consent to text Plaintiff, or (b) Defendant did not obtain prior express written consent.

**Do Not Call Registry Class:** All persons in the United States who from four years prior to the filing of this action (1) Defendant (or an agent acting on behalf of Defendant) texted more than one time on his/her residential telephone, (2) within any 12-month period, (3) where the telephone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same reason Plaintiff was texted, and (5) for whom Defendant claims (a) it obtained prior express written consent in the same manner as Defendant claims it obtained prior express written consent to text Plaintiff, or (b) Defendant did not obtain prior express written consent.

30. The following individuals are excluded from the Classes: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Classes; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

31. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Classes such that joinder of all members is impracticable. This is apparent from the fact that HST provides leads and autodialers to its salespeople.

32. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes. Common questions for the Classes include, but are not necessarily limited to the following:

(a) whether Defendant utilized an automatic telephone dialing system to send text messages to Plaintiff and the members of the Autodialed No Consent Class;

- (b) whether Defendant systematically sent multiple text messages to Plaintiff and consumers whose telephone numbers were registered with the National Do Not Call Registry;
- (c) whether Defendant sent autodialed text messages to Plaintiff and members of the Classes without first obtaining prior express written consent to send the texts;
- (d) whether Defendant's conduct constitutes a violation of the TCPA; and
- (e) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

33. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Classes, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Classes, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Classes, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Classes.

34. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Classes and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Classes and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Classes uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Classes as wholes, not on facts or law applicable only to Plaintiffs. Additionally, the damages suffered by individual members of the Classes will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Classes to obtain effective relief from Defendant's misconduct on an individual basis. A class action

provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Autodialed No Consent Class)**

35. Plaintiff repeats and realleges paragraphs 1 through 34 of this Complaint and incorporates them by reference herein.

36. Defendant and/or its agents sent unwanted solicitation text messages to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using an autodialer.

37. These solicitation text messages were sent *en masse* without the consent of the Plaintiff and the other members of the Autodialed No Consent Class to receive such solicitation text messages.

38. Defendant's conduct was negligent, willful, or knowing

39. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the Autodialed No Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of \$500.00 in damages for each violation of such act.

40. In the event that the Court determines that Defendant's conduct was willful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Autodialed No Consent Class.

**SECOND CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violation of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff Van Elzen and the Do Not Call Registry Class)**

41. Plaintiff repeats and realleges the paragraphs 1 through 34 of this Complaint and incorporates them by reference herein.

42. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o 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 of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

43. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) is "applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers."<sup>13</sup>

44. Any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

45. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, text message solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

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<sup>13</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

46. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one text message in a 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

47. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Registry Class.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- a) An order certifying the Classes as defined above; appointing Plaintiff as the representative of the Classes; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages to be paid into a common fund for the benefit of Plaintiff and the Classes;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) A declaratory judgment that Defendant's text messaging equipment constitutes an automatic telephone dialing system under the TCPA;
- e) An injunction requiring Defendant to cease all unsolicited texting activity, and to otherwise protect the interests of the Classes; and
- f) Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff requests a jury trial.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of those similarly situated individuals

Dated: July 11, 2019

By: /s/ Stefan Coleman

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law@stefancoleman.com  
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kaufman@kaufmanpa.com  
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400 NW 26<sup>th</sup> Street  
Miami, FL 33127  
Telephone: (305) 469-5881

*Attorneys for Plaintiff and the putative Classes*

# EXHIBIT H

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA**

**DAVID VAN ELZEN**, individually and on behalf of all others similarly situated,

*Plaintiff,*

v.

**LIGHTHOUSE SALES & MARKETING, LLC**, a Florida limited liability company,

*Defendant.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Lighthouse Sales & Marketing, LLC d/b/a Agent Link (“Agent Link” or “Defendant”) to stop Defendant from violating the Telephone Consumer Protection Act by making artificial or pre-recorded voice calls to consumers, and to otherwise obtain injunctive and monetary relief for all persons injured by Agent Link’s conduct. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**INTRODUCTION**

1. Agent Link is a headhunter specializing in placement of licensed insurance agents.
2. Agent Link boasts that it maintains a database with “every licensed agent in the U.S” and that it provides its clients with the ability to target those agents.
3. In order to recruit agents, Agent Link places artificial or pre-recorded voice calls to consumers without obtaining their prior express consent.

4. Agent Link made an unsolicited, artificial or pre-recorded voice recruitment call to Plaintiff.

5. In response to this call, Plaintiff files this lawsuit seeking injunctive relief, requiring Defendant to stop making artificial or pre-recorded voice calls to consumers without their consent, as well as an award of statutory damages to the members of the Class and costs.

### **PARTIES**

6. Plaintiff Van Elzen is a Menasha, Wisconsin resident.

7. Defendant Agent Link is a Florida limited liability company headquartered in Clearwater, Florida. Agent Link conducts business throughout this District, Florida, and the United States.

### **JURISDICTION AND VENUE**

8. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

9. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant resides in this District and because the wrongful conduct giving rise to this case was directed from this District.

### **COMMON ALLEGATIONS**

#### **Agent Link Recruits Licensed Agents by Placing Artificial or Pre-recorded Voice Calls**

10. Agent Link advertises itself as being able to provide insurance brokerages with the exact types of licensed agents those brokerages are looking to recruit:

## Experience

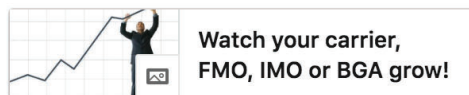


### Producer Liaison

Agent Link Marketing

Jun 2016 – Present · 3 yrs 3 mos  
Clearwater, FL

We have a database of every licensed insurance and financial producer in the US. We target that database in many different ways... email, direct mail, telephone calls. In fact, any way you can think of reaching and targeting producers, we do it! We help you get exactly the type of quality producer that is a great fit for your organization. Our goal is to make sure that you get results and ROI – return on your investment from your marketing dollars.



7

11. As part of these efforts, Agent Link makes artificial or pre-recorded voice recruiting calls to insurance agents without obtaining their prior express consent.

12. As explained by the Federal Communications Commission (“FCC”) in its 2012 order, the TCPA requires prior express consent “for all ... pre-recorded calls to wireless numbers and residential lines.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

13. There are many complaints online regarding Agent Link’s unwanted artificial or pre-recorded voice recruiting calls:

- “When I got the call today it said ‘Hi, this is Adam from Agent Link.’ I was a prerecorded thing. I just hung up. I am also a licensed insurance broker in my state, but I wouldn’t touch these people with a 10-foot pole, based on the history of this number.”<sup>11</sup>
- “Licensed Insurance recruiters???”<sup>13</sup>
- “Robocall looking for life and health agents”<sup>14</sup>

<sup>7</sup> <https://www.linkedin.com/in/toby-brandenburgh-a5658234/>

<sup>11</sup> <https://800notes.com/Phone.aspx/1-702-444-4939/50>

<sup>13</sup> <https://800notes.com/Phone.aspx/1-936-209-3250>

<sup>14</sup> <https://www.shouldianswer.com/phone-number/9362093250>

- “Life & Health Insurance Looking for sales agents.”<sup>16</sup>
- “robocalls constantly.”<sup>17</sup>
- “Life Insurance Robocall”<sup>18</sup>
- “soliciting ins agents”<sup>19</sup>

## PLAINTIFF’S ALLEGATIONS

### **Agent Link Placed a Pre-recorded Call to Plaintiff Without His Consent**

14. Plaintiff is a licensed insurance agent.

15. On April 24, 2019 at 10:43 AM, Plaintiff received an artificial or pre-recorded voice call to his cell phone from Defendant regarding the recruitment of final expense insurance agents.

16. The artificial or pre-recorded voice call that Plaintiff received gave the automated option to either opt-out of receiving future calls, or leave a name and number to be contacted. Plaintiff provided his name and number in order to learn the identity of the company who initiated the unsolicited call to his cell phone.

17. On April 26, 2019, Plaintiff received a voicemail that came straight to his phone from Toby of Agent Link. Toby explained that he received Plaintiff’s message and was returning Plaintiff’s call. No phone number was provided and Plaintiff is unsure which phone number Toby called from, as the call did not display on Plaintiff’s cell phone, only the voicemail.

18. Upon information and belief, this is the Toby that contact Plaintiff:

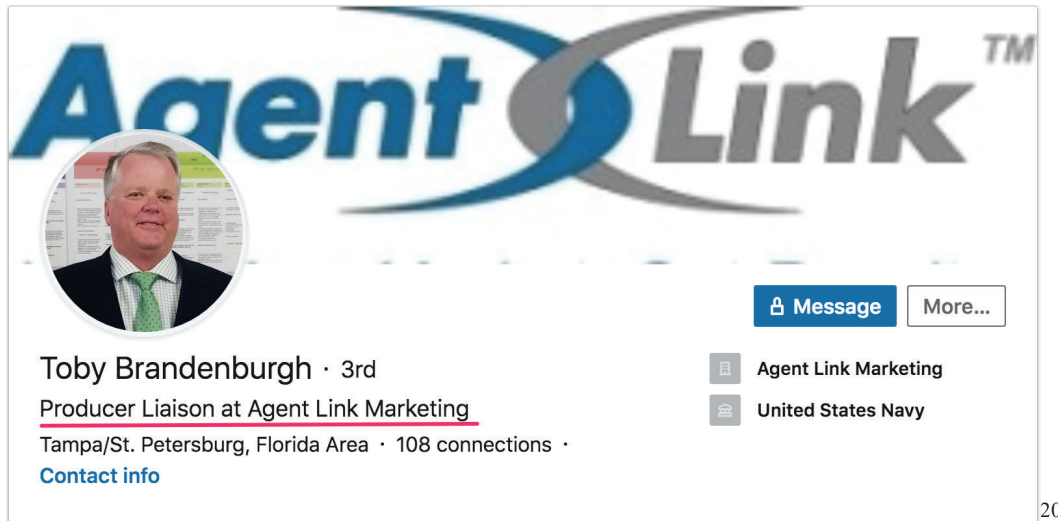
---

<sup>16</sup> <https://findwhocallsyou.com/9362093250?CallerInfo>

<sup>17</sup> <https://www.shouldianswer.com/phone-number/4072041250>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*



20

19. Plaintiff does not have a relationship with Agent Link, or any of its affiliated companies, nor has he ever consented to any contact from Defendant.

20. Simply put, Agent Link did not obtain Plaintiff's prior express consent to place any telephone calls to him using an artificial or pre-recorded voice.

21. Defendant's unauthorized telephone calls harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Van Elzen's use and enjoyment of his phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

22. Seeking redress for these injuries, Van Elzen, on behalf of himself and a Class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited artificial or pre-recorded voice calls to the cellular phone numbers.

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<sup>20</sup> <https://www.linkedin.com/in/toby-brandenburgh-a5658234/>

## CLASS ALLEGATIONS

### **Class Treatment Is Appropriate for Plaintiff's TCPA Claims Arising From Calls Made by Agent Link**

23. Plaintiff brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following Class:

All persons in the United States who from four years prior to the filing of this action (1) Defendant (or agents acting on behalf of Defendant) called (2) on their cellular phone number (3) using an artificial or pre-recorded voice.

24. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definition following appropriate discovery.

25. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

26. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

(a) whether Defendant used an artificial or pre-recorded voice message to call Plaintiff and members of the Class;

- (b) whether Defendant placed these calls to Plaintiff and members of the Class without first obtaining consent to make the calls;
- (c) whether Defendant's conduct constitutes a violation of the TCPA; and
- (d) whether members of the Class are entitled to treble damages based on the willfulness of Defendant's conduct.

27. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel have any interest adverse to the Class.

28. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as wholes, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff Van Elzen and the Class)**

29. Plaintiff repeats and realleges paragraphs 1 through 28 of this Complaint and incorporates them by reference herein.

30. Defendant and/or its agents made unwanted telephone calls to Plaintiff and the other members of the Class using an artificial or pre-recorded voice.

31. These artificial or pre-recorded voice calls were made *en masse* without the consent of the Plaintiff and the other members of the Class.

32. Defendant has, therefore, violated 47 U.S.C. §§ 227(b)(1)(A), (B). As a result of Defendant's conduct, Plaintiff and the other members of the Class are each entitled to a minimum of \$500 in damages for each violation, and up to \$1,500 in damages for each violation in the event that the Court determines that Defendant's conduct was willful and knowing.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying the Class as defined above; appointing Plaintiff as the representative of the Class; and appointing his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages for the benefit of Plaintiff and the Class;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

**JURY TRIAL DEMAND**

Plaintiff requests a jury trial.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of all others similarly situated

Dated: September 12, 2019

/s/ Stefan Coleman

Stefan Coleman (FL Bar No. 30188)

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Telephone: (305) 469-5881

*\*Trial Counsel*

*Attorneys for Plaintiff and the putative Class*

# **EXHIBIT I**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**KALAMATA RESEARCH SERVICES,  
LLC**, a Florida limited liability company, and  
**GLOBAL MARKETING RESEARCH  
SERVICES, INC.**, a Florida corporation,

*Defendants.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Kalamata Research Services, LLC (“Kalamata” or “Defendant Kalamata”) and Defendant Global Marketing Research Services, Inc. (“GMRS” or “Defendant GMRS”) to stop the Defendants from violating the Telephone Consumer Protection Act by sending unsolicited, autodialed text messages to consumers, and to otherwise obtain injunctive and monetary relief for all persons injured by the conduct of Defendant Kalamata and Defendant GMRS. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**INTRODUCTION**

1. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3). 20. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day.

*In re Rules and Regulations Implementing the TCPA of 1991*, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

2. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

3. Industry data shows that the number of robocalls made each month increased from 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

4. According to online robocall tracking service “YouMail,” 5.2 billion robocalls were placed in March 2019 alone, at a rate of 168.8 million per day. [www.robocallindex.com](http://www.robocallindex.com) (last visited April 9, 2019). YouMail estimates that in 2019 robocall totals will exceed 60 billion. *See id.*

5. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, [www.fcc.gov/consumer-help-center-data](http://www.fcc.gov/consumer-help-center-data).

#### **INTRODUCTION TO KALAMATA AND GMRS**

6. Kalamata is a market research company that conducts phone and text message surveys with consumers.<sup>1</sup>

7. GMRS is a market research company that deals primarily in political polls and voter contact services in which GMRS helps politicians and political organizations get messages out to voters.<sup>2</sup>

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<sup>1</sup> <https://theotherhudsonvalley.com/2018/06/04/super-pac-pat-ryan-ny/>

<sup>2</sup> <http://www.polling.net/#services>

8. This complaint will show that Kalamata and GMRS are owned, operated and staffed by the same, if not mostly the same employees.

9. In order to conduct surveys, Kalamata and GMRS place phone calls and send text messages en masse to consumers.

10. Such text messages are sent using an automated telephone dialing system (“ATDS” or “autodialer”) without any consent from the consumer.

11. Plaintiff received an autodialed text message to his cellular phone from Defendant regarding a local issue that is presumed to be political in nature.

12. In response to this text message, Plaintiff files this class action lawsuit seeking injunctive relief, requiring Kalamata and GMRS to cease sending unsolicited, autodialed text messages to consumers’ cellular telephone numbers, as well as an award of statutory damages to the members of the Class.

### **PARTIES**

13. Plaintiff Van Elzen is a Menasha, Wisconsin resident.

14. Defendant Kalamata is a Florida limited liability company with its head office located in Melbourne, Florida. Kalamata does business throughout this District and the United States.

15. Defendant GMRS is a Florida corporation with its head office located in Melbourne, Florida. Kalamata does business throughout this District and the United States.

### **JURISDICTION AND VENUE**

16. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

17. This Court has personal jurisdiction over Defendant and venue is proper in this District under 28 U.S.C. § 1391(b) because Plaintiff resides in this District, and because the wrongful conduct giving rise to this case was directed to this District by Defendants.

### COMMON ALLEGATIONS

#### KALAMATA AND GMRS ARE OWNED, OPERATED AND STAFFED BY THE SAME EMPLOYEES

18. The Florida registry for Kalamata shows that its managers include Anthony J. Diana and Chris Stella:

Title MGR

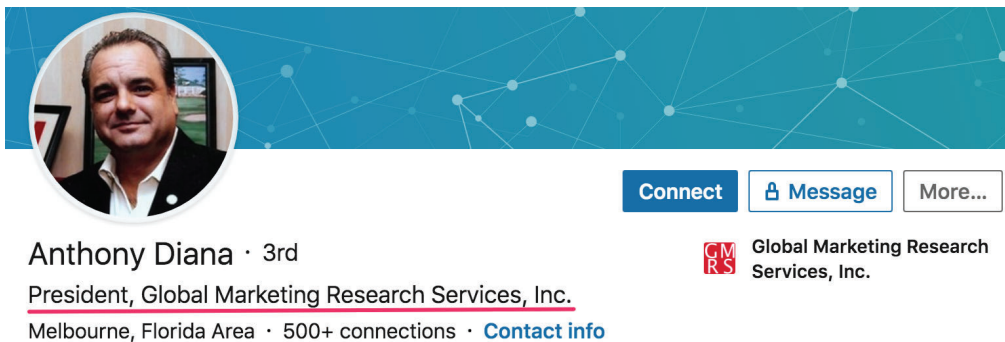
STELLA, CHRIS  
P.O. BOX 880  
MELBOURNE, FL 32902

Title MGR

DIANA, ANTHONY J  
P.O. BOX 880  
MELBOURNE, FL 32902

3

19. Anthony Diana is the President of GMRS:



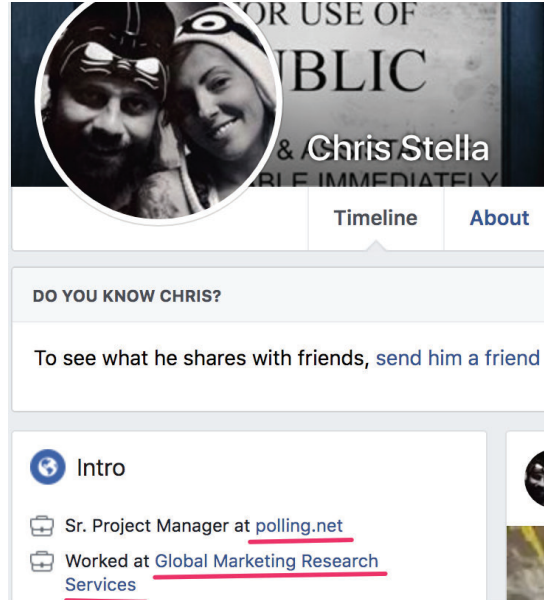
4

3

<http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=KALAMATARESEARCHSERVICES%20L050000737890&aggregateId=flal-105000073789-b2a01122-2a83-4687-9d7a-174d7e1582af&searchTerm=kalamata%20research%20llc&listNameOrder=KALAMATARESEARCHSERVICES%20L050000737890>

<sup>4</sup> <https://www.linkedin.com/in/anthony-diana-2442401/>

20. Chris Stella is the Senior Project Manager at GMRS:



21. The website for GMRS, which is [polling.net](#), displays the names of Anthony Diana and Chris Stella:



<sup>5</sup> <https://www.facebook.com/cstella23> - Note: [polling.net](#) is a d/b/a of GMRS

<sup>6</sup> <http://www.polling.net/#services>

22. The principal address for Kalamata appears to be 809 Palmetto Ave, Melbourne, Florida, according to various business registry sources online.<sup>7</sup>

23. 809 Palmetto Ave, Melbourne, Florida is the address of OTR, a market research recruiting company that hires marketer research interviewers for GMRS:

OTR  
809 Palmetto Ave Melbourne, FL 32901  
Phone: 321-725-8886 8

24. The website for OTR (otronline.net) is registered to Anthony Diana, President of GMRS.<sup>9</sup>

25. The Facebook page for OTR specifically shows that it runs job fairs for GMRS.

For example:



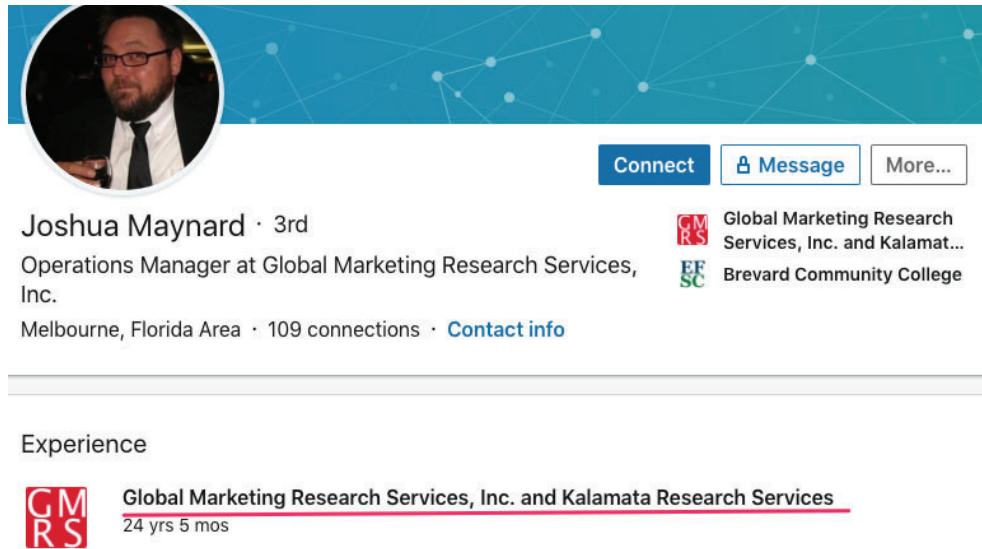
<sup>7</sup> <https://www.corporationwiki.com/Florida/Melbourne/kalamata-research-services-llc-3348237.aspx>

<sup>8</sup> <https://www.otronline.net/>

<sup>9</sup> <https://domainbigdata.com/otronline.net>

<sup>10</sup> <https://www.facebook.com/Otr-165809263431648/>


26. Joshua Maynard, the Operations Manager for GMRS is also the Operations Manager for Kalamata:



Joshua Maynard · 3rd  
Operations Manager at Global Marketing Research Services, Inc.  
Melbourne, Florida Area · 109 connections · [Contact info](#)

Global Marketing Research Services, Inc. and Kalamata...  
Brevard Community College

Experience

 Global Marketing Research Services, Inc. and Kalamata Research Services  
24 yrs 5 mos

11

### **KALAMATA AND GMRS SEND BULK TEXT MESSAGES TO CONSUMERS USING AN AUTODIALER**

27. GMRS is open about its use of workstations that have predictive dialing capabilities claiming, “Our dialing system features full predictive capabilities at every station.”<sup>12</sup>

28. It is not currently known which system Kalamata and GMRS use to send out text messages.

29. In sending the text messages at issue, Defendant, or a third party acting on its behalf, used an automatic telephone dialing system; hardware and/or software with the capacity to store or produce cellular telephone numbers to be called, using a random or sequential number generator, and/or to call numbers from pre-loaded lists. This is evident from the circumstances surrounding the text messages, including the text messages’ commercial and generic content, that

<sup>11</sup> <https://www.linkedin.com/in/joshua-maynard-36346a37/>

<sup>12</sup> <http://www.polling.net/#technology>

they were sent without consent, and that they were sent from a phone number that is not in service, which is consistent with the use of an automatic telephone dialing system to send text messages.

30. There are numerous complaints posted online about autodialed text messages that consumers received from Kalamata and GMRS without consent. This is a small sampling of those complaints:

- “Hey Donna this is Alex. We're texting voters about local issues. Your opinion matters. Can you take this short survey’  
One problem, Donna does not nor has ever lived her. In fact I don't even know Donna.”<sup>13</sup>
- “Unsolicited text message received:  
‘We're texting voters about local issues and your opinion matters. Please take this short survey:’  
With a tiny URL and no identification as to the survey company, how to unsubscribe, etc. Reported as spam text due to suspicion of spam/malware. If it's legit they need to do a better job identifying themselves.”<sup>14</sup>
- “4-14-19 at 7:18 pm received unsolicited robotext “from 216 area code possibly Cleveland, OH” advertising the following: Hi this is Albert, We're texting voters about local issues and your opinion matters. Please take this short survey: <https://httpslink.com/a114534>. DEFINITE SCAM!”<sup>15</sup>
- “On 2/22/2019: spam text to my personal unlisted phone number. They had my name and said "we are texting voters about local issues-please take this short survey" with a link which i did not access. My phone number is not on my voter registration so this is really disturbing”<sup>16</sup>
- “Got a text from 833-569-0326 saying to take a survey about local issues. The survey had this number on it. I tried calling but an automated message said that they will not accept calls with blocked caller IDs!! FISHY!!”<sup>17</sup>
- “Same crap here, got an SMS from +1-833-568-9654 with a link to a survey on [selfserve.decipherinc.com](http://selfserve.decipherinc.com) by "survey team at Kalamata research (212-235-6200)" for "voters about local issues"...except I'm not a registered voter nor the person they addressed to. Personal info sold left and right to all scammers.”<sup>18</sup>
- “Same here. Text about a survey for local issues for voters”<sup>19</sup>

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<sup>13</sup> <https://www.disboards.com/threads/watch-out-for-this-scam.3706989/>

<sup>14</sup> <https://800notes.com/Phone.aspx/1-833-568-5686>

<sup>15</sup> <https://www.numberguru.com/phone/216/446/8447/>

<sup>16</sup> <http://number.phonecheckers.com/646-506-4615>

<sup>17</sup> <https://800notes.com/Phone.aspx/1-212-235-6200>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

**Plaintiff Received an Unsolicited Autodialed Text Message to  
His Cell Phone**

31. On December 22, 2019, Plaintiff Van Elzen received an autodialed text message on his cell phone from the Defendants using phone number 877-612-1508. The text message stated:

“DAVID, We’re texting voters about local issues and your opinion matters. Please click to participate: <http://lnk1.net/v1089164>.”

32. Plaintiff believes this text message was sent *en masse* because the text message was impersonal in nature, and was sent using an autodialer, which enables a sender to send the identical message to thousands of recipients automatically.

33. The caller complaints, referenced above, show that the Defendants consistently send text messages using the same, or very similar wording.

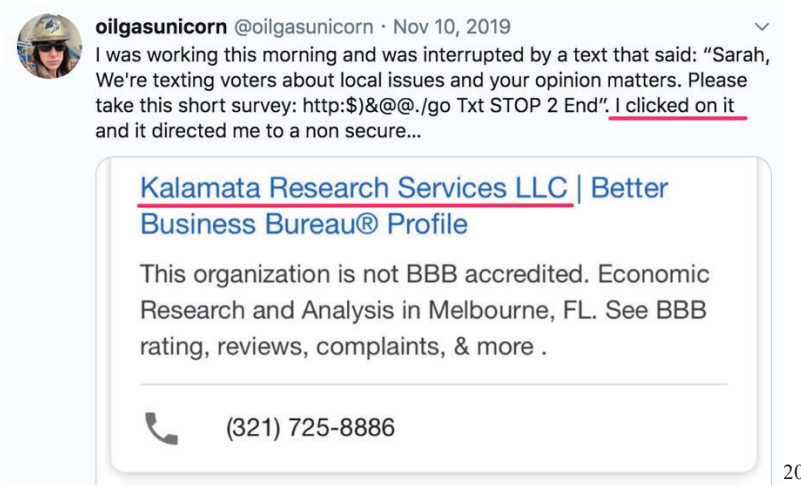
34. Van Elzen clicked on the link provided in the autodialed text message and was brought to the website address:  
<https://selfserve.decipherinc.com/survey/selfserve/1f07/191130?list=200&phone=9207023152&vbid=WI-12959124#?>

35. The website indicated the fact that the text was sent on behalf of Kalamata Research with a contact phone number of 212-235-6200.

36. When 212-235-6200 is called, it leads to a voicemail that identifies the company as being Research Survey.

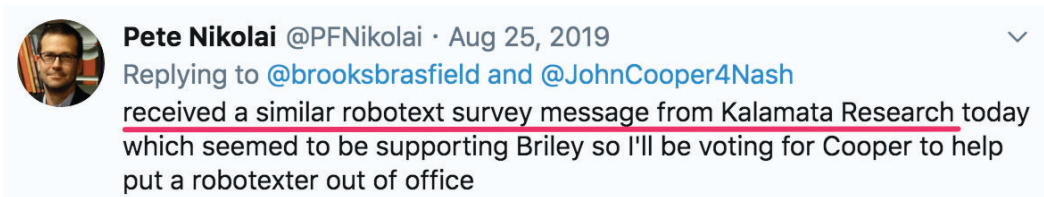
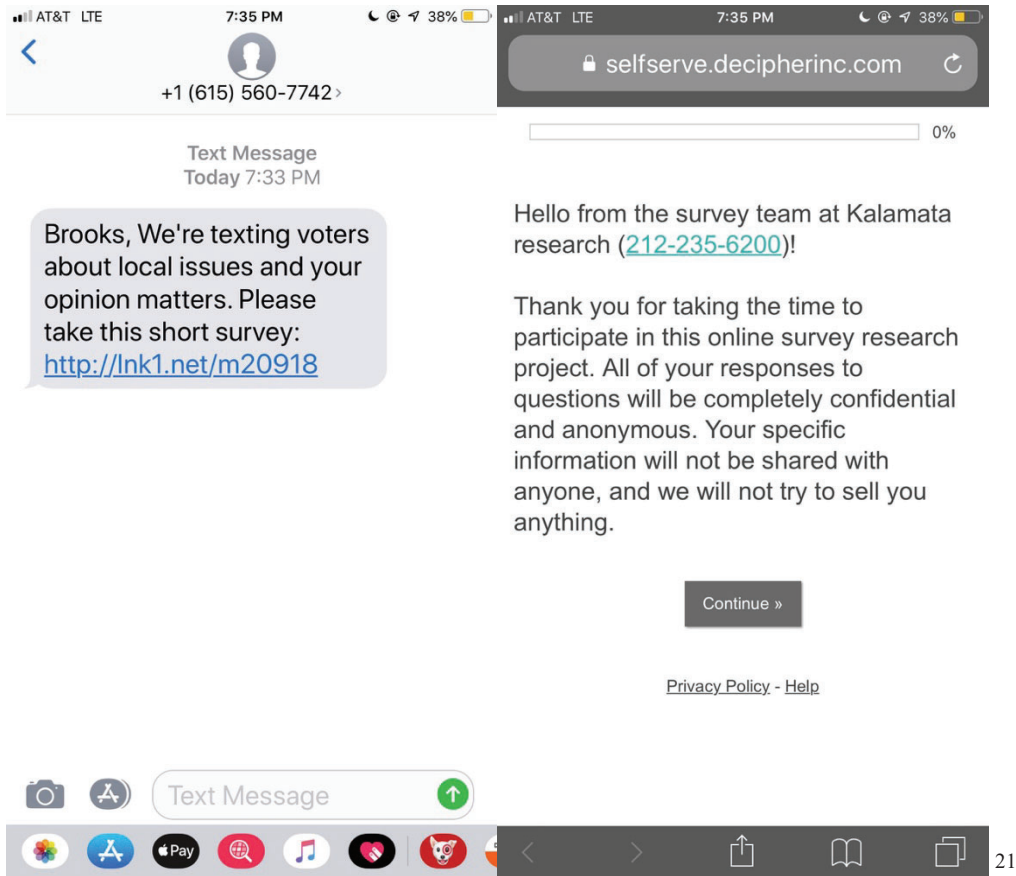
37. 877-612-1508, the phone number the autodialed text message was sent from is not in service.

38. Other consumers who received the same, or similar text messages from the Defendants have shown online that the text link led to a page identifying the sender as being Kalamata Research:



Just got polled via SMS by Kalamata research for the Nashville Mayoral Runoff. appears to be for [@JohnCooper4Nash](#). See thread below for screenshots

<sup>20</sup> <https://twitter.com/oilgasunicorn/status/1193637479531864065>



39. Plaintiff has never given Kalamata or GMRS consent to send automated text messages to him.

40. The unauthorized text message that was sent by Kalamata and GMRS, as alleged herein, harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Van Elzen’s use and enjoyment of his cellular phone, in addition to the wear and tear

<sup>21</sup> <https://twitter.com/brooksbrasfield/status/1157816385650778113>

<sup>22</sup> *Id.*

on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

41. The unauthorized text message also wasted Van Elzen's time, which he spent reading and clicking on the link in the text message to see who was responsible for sending the autodialed text message to him.

42. Seeking redress for these injuries, Van Elzen, on behalf of himself and a Class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed text messages to cellular telephones.

### **CLASS ALLEGATIONS**

#### **Class Treatment Is Appropriate for Plaintiff's TCPA Claim**

43. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following Class:

**Autodialed No Consent Class:** All persons in the United States who from four years prior to the filing of this action through class certification (1) Defendant Kalamata and/or Defendant GMRS (or an agent acting on behalf of either Defendant) text messaged, (2) on the person's cellular telephone number, (3) using a text messaging platform substantially similar to the text messaging platform Defendant Kalamata and Defendant GMRS used to text message Plaintiff, (4) for whom the Defendants claim (a) they obtained prior express consent in the same manner as the Defendants claim they supposedly obtained prior express consent to text message Plaintiff, or (b) they did not obtain prior express consent.

44. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant Kalamata, Defendant GMRS, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a

timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against the Defendants have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definition following appropriate discovery.

45. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

46. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) whether the Defendants used an automatic telephone dialing system to send text messages to Plaintiff and the members of the Autodialed No Consent Class;
- (b) whether the Defendants sent the text messages to Plaintiff and the members of the Autodialed No Consent Class without the necessary consent;
- (c) whether Defendants' conduct constitutes a violation of the TCPA; and
- (d) whether members of the Class are entitled to treble damages based on the willfulness of Defendants' conduct.

47. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Class, and the Defendants have no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Class.

48. **Appropriateness:** This class action is also appropriate for certification because Defendant Kalamata and Defendant GMRS have acted or refused to act on grounds generally applicable to the Class and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendants' business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendants' conduct with respect to the Class, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendants' misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Autodialed No Consent Class)**

49. Plaintiff repeats and realleges paragraphs 1 through 48 of this Complaint and incorporates them by reference.

50. Defendant Kalamata and Defendant GMRS, or their agents sent unwanted text messages to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using an autodialer.

51. These text messages were sent *en masse* without the consent of the Plaintiff and the other members of the Autodialed No Consent Class to receive such text messages.

52. Defendants' conduct was negligent, wilful, or knowing.

53. Defendant Kalamata and Defendant GMRS have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiff and the other members of the Autodialed No Consent Class are each entitled to between \$500 and \$1,500 for each and every text message.

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Van Elzen, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying the Class as defined above, and appointing Plaintiff as the representative of the Class and her attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendants' actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant Kalamata and Defendant GMRS to cease all unsolicited texting activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

### **JURY DEMAND**

Plaintiff Van Elzen requests a jury trial.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of those similarly situated individuals

Dated: January 15, 2020

By: /s/ Stefan Coleman

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*Attorneys for Plaintiff and the putative Class*

# **EXHIBIT J**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**GLOBAL STRATEGY GROUP, LLC**, a  
New York limited liability company, and  
**AMERICAN DIRECTIONS RESEARCH  
GROUP, INC.**, a Washington DC corporation,

*Defendants.*

Case No. 1:20-cv-03541

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Van Elzen” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendants Global Strategy Group, LLC (“Global Strategy”) and American Directions Research Group, Inc. (“American Directions”) to stop Defendants from violating the Telephone Consumer Protection Act by sending unsolicited, autodialed text messages to consumers, and to otherwise obtain injunctive and monetary relief for all persons injured by the conduct of the Defendants. Plaintiff, for his Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

**INTRODUCTION**

1. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3). 20. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day.

*In re Rules and Regulations Implementing the TCPA of 1991*, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

2. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

3. Industry data shows that the number of robocalls made each month increased from 831 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

4. According to online robocall tracking service “YouMail,” 5.2 billion robocalls were placed in March 2019 alone, at a rate of 168.8 million per day. [www.robocallindex.com](http://www.robocallindex.com) (last visited April 9, 2019). YouMail estimates that in 2019 robocall totals will exceed 60 billion. *See id.*

5. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, [www.fcc.gov/consumer-help-center-data](http://www.fcc.gov/consumer-help-center-data).

#### INTRODUCTION TO GLOBAL STRATEGY GROUP

6. Global Strategy is a public relations, research, and political polling firm that conducts phone and text message surveys directed to consumers.<sup>1</sup>

7. Global Strategy hired Defendant American Directions to perform a text message blasting campaign to consumers’ cell phones without consent to fill out survey responses on [decipherinc.com](http://decipherinc.com), for which Global Strategy was paid.

8. Such text messages were sent using an automated telephone dialing system (“ATDS” or “autodialer”) without any consent from the consumer.

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<sup>1</sup> <https://theotherhudsonvalley.com/2018/06/04/super-pac-pat-ryan-ny/>

9. Plaintiff received an autodialed text message to his cellular phone from Defendants regarding a local issue that is presumed to be political in nature.

10. In response to this text message, Plaintiff files this class action lawsuit seeking injunctive relief, requiring Defendants to cease sending unsolicited, autodialed text messages to consumers' cellular telephone numbers, as well as an award of statutory damages to the members of the Class.

### **PARTIES**

11. Plaintiff Van Elzen is a Menasha, Wisconsin resident.

12. Defendant Global Strategy Group is a New York limited liability company that does business throughout this District and the United States.

13. Defendant American Directions Research Group is a Washington DC corporation doing business in Washington DC and contracting with companies like Global Strategy in New York.

### **JURISDICTION AND VENUE**

14. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 ("TCPA").

15. This Court has personal jurisdiction over Defendants and venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant Global Strategy resides in this District, Defendant American Directions does business in this District, and because the wrongful conduct giving rise to this case was directed from this District.

### COMMON ALLEGATIONS

16. Defendant Global Strategy Group, LLC is a public affairs, communications, and research partner for companies and campaigns.

17. As part of their polling process, Global Strategy must reach consumers in order to encourage them to fill out their surveys.

18. Defendant Global Strategy hired Defendant American Directions to perform a text blasting campaign on its behalf as part of an overall campaign to reach consumers' cell phones using text messages.

19. Defendant American Directions operates a large call center to send and process respondents of the text message campaigns.

20. Defendant American Directions discloses on its website that “ADRG currently maintains numerous interviewing centers, throughout the United States. These facilities house hundreds of interviewing stations, each equipped with the latest in computer-assisted-telephone-interviewing (CATI) software, as well as highly efficient, respondent-friendly *predictive dialing systems*.” (emphasis added)<sup>2</sup>

“Defendant American Directions discloses on their “Survey Capabilities” webpage that: Utilizing multiple facilities and all of our state-of-the-art telephony allows our research group to maximize capacity and efficiency for any project in the United States. Part of the ADRG telephony solutions that support the research group include intelligent, respondent-friendly *predictive dialing systems* that enhance productivity and sample frame penetration.”<sup>3</sup>

21. Employees themselves categorize their work that they “auto dial telephone surveys. Some people do not want to be contacted.”<sup>4</sup>

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<sup>2</sup> <http://www.adg-research.com/overview/>

<sup>3</sup> <http://www.adg-research.com/telephone>

<sup>4</sup> [https://www.glassdoor.sg/Reviews/American-Directions-Group-Reviews-E957380\\_P2.htm](https://www.glassdoor.sg/Reviews/American-Directions-Group-Reviews-E957380_P2.htm)

22. Plaintiff Van Elzen received this unsolicited text message with a link directing him to fill out a survey on [decipherinc.com/survey](https://decipherinc.com/survey) operated by Defendants.

23. Defendants use the Decipher platform to conduct their surveys.<sup>5</sup>

24. There are numerous complaints from other consumers online regarding the same text message Plaintiff Van Elzen received which included language on the survey webpage that said “Survey team at Kalamata research” and provided a phone number 212-235-6200.

25. In sending the text messages at issue, Defendants used an automatic telephone dialing system; hardware and/or software with the capacity to store or produce cellular telephone numbers to be called, using a random or sequential number generator, and/or to call numbers from pre-loaded lists. This is evident from the circumstances surrounding the text messages, including the text messages’ commercial and generic content, that they were sent without consent, and that they were sent from a phone number that is not in service, which is consistent with the use of an automatic telephone dialing system to send text messages.

26. Defendants will rely on the fact that individual telemarketers will “log into a database system for a particular texting campaign, manually select a number to be texted, physically review the message to be sent and then click ‘send’ to initiate the text message.” Defendants reliance on a human clicking send is misplaced.

27. The Second Circuit Court of Appeals in *Duran v. LaBoom Disco, Inc.* on April 7, 2020 recognized that “*clicking ‘send’ or some similar button – much like flipping on an ‘on’ switch – is not the same thing as dialing, since it is not the actual or constructive inputting of numbers to make an individual telephone call or to send an individual text message. Clicking*

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<sup>5</sup> <https://www.linkedin.com/in/rshaughnessy/> and <https://www.progressivedatajobs.org/2017/11/09/gsgdatalyst/>

*'send' does not require enough human intervention to turn an automatic dialing system into a non-automatic one.*"

28. So too here in this case. On information and belief, Defendants' dialing system can be utilized in a way where call center personnel click "send" in order for text messages to be sent—such actions do not place the dialing equipment outside the scope of the definition of an ATDS.

29. Defendant Global Strategy directed Defendant American Directions to perform this autodialing text campaign and paid for its services.

30. There are numerous complaints posted online about the same or similar autodialed text messages that the Plaintiff received from Defendants without his consent. This is a small sampling of those complaints:

- "Hey Donna this is Alex. We're texting voters about local issues. Your opinion matters. Can you take this short survey? One problem, Donna does not nor has ever lived her. In fact I don't even know Donna."<sup>6</sup>
- "Unsolicited text message received: 'We're texting voters about local issues and your opinion matters. Please take this short survey:' With a tiny URL and no identification as to the survey company, how to unsubscribe, etc. Reported as spam text due to suspicion of spam/malware. If it's legit they need to do a better job identifying themselves."<sup>7</sup>
- "4-14-19 at 7:18 pm received unsolicited robotext "from 216 area code possibly Cleveland, OH" advertising the following: Hi this is Albert, We're texting voters about local issues and your opinion matters. Please take this short survey: <https://httpslink.com/a114534>. DEFINITE SCAM!"<sup>8</sup>
- "On 2/22/2019: spam text to my personal unlisted phone number. They had my name and said "we are texting voters about local issues-please take this short survey" with a link which i did not access. My phone number is not on my voter registration so this is really disturbing"<sup>9</sup>

<sup>6</sup> <https://www.disboards.com/threads/watch-out-for-this-scam.3706989/>

<sup>7</sup> <https://800notes.com/Phone.aspx/1-833-568-5686>

<sup>8</sup> <https://www.numberguru.com/phone/216/446/8447/>

<sup>9</sup> <http://number.phonecheckers.com/646-506-4615>

- “Got a text from 833-569-0326 saying to take a survey about local issues. The survey had this number on it. I tried calling but an automated message said that they will not accept calls with blocked caller IDs!! FISHY!!”<sup>10</sup>
- “Same crap here, got an SMS from +1-833-568-9654 with a link to a survey on selfserve.decipherinc.com by "survey team at Kalamata research (212-235-6200)" for "voters about local issues"...except I'm not a registered voter nor the person they addressed to. Personal info sold left and right to all scammers.”<sup>11</sup>
- “Same here. Text about a survey for local issues for voters”<sup>12</sup>

**Plaintiff Received an Unsolicited Autodialed Text Message to His Cell Phone**

31. On December 22, 2019, Plaintiff Van Elzen received an autodialed text message on his cell phone from the Defendants using phone number 877-612-1508. The text message stated:

“DAVID, We’re texting voters about local issues and your opinion matters. Please click to participate: <http://lnk1.net/v1089164>.”

32. Plaintiff believes this text message was sent *en masse* because the text message was impersonal in nature, and was sent using an autodialer, which enables a sender to send the identical message to thousands of recipients automatically.

33. The caller complaints, referenced above, show that the Defendants consistently sent text messages using the same, or very similar wording.

34. Van Elzen clicked on the link provided in the autodialed text message and was brought to the website address:  
<https://selfserve.decipherinc.com/survey/selfserve/1f07/191130?list=200&phone=9207023152&vbid=WI-12959124#?>

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<sup>10</sup> <https://800notes.com/Phone.aspx/1-212-235-6200>

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

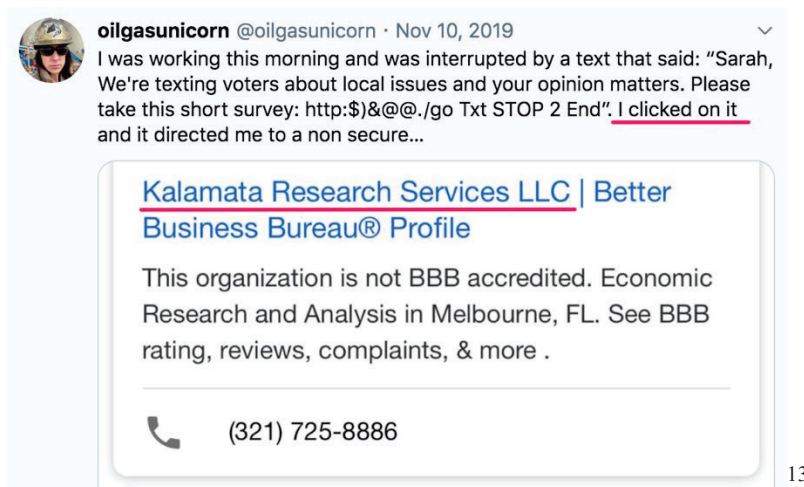
35. The website indicated the fact that the text was sent on behalf of Kalamata Research with a contact phone number of 212-235-6200.

36. Defendant Global Strategy Group is part-owner of Kalamata Research and, on information and belief, utilized the Kalamata name in the text message campaign at issue.

37. When 212-235-6200 is called, it leads to a voicemail that identifies the company as being Research Survey.

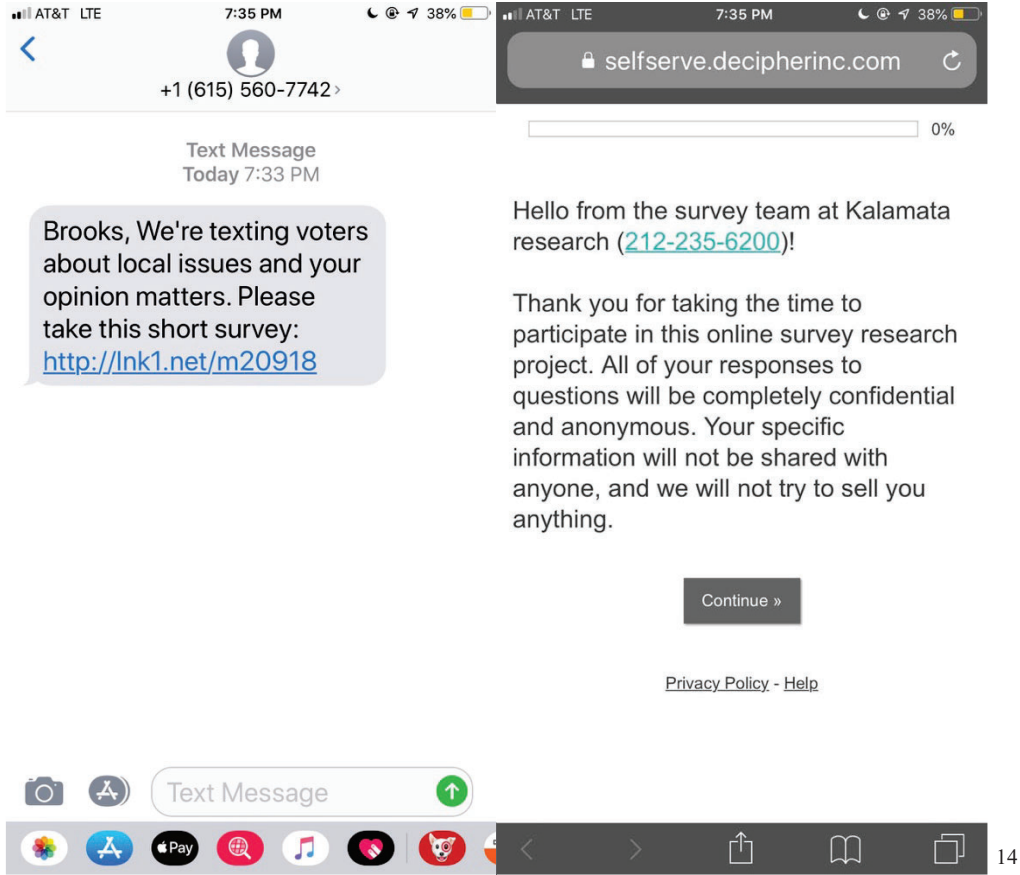
38. 877-612-1508, the phone number the autodialed text message was sent from, is not in service.

39. Other consumers who received the same, or similar text messages from the Defendants have shown online that the text link led to a page identifying the sender as being Kalamata Research:



Just got polled via SMS by Kalamata research for the Nashville Mayoral Runoff. appears to be for @JohnCooper4Nash. See thread below for screenshots

<sup>13</sup> <https://twitter.com/oilgasunicorn/status/1193637479531864065>



40. Plaintiff has never given Defendant Global Strategy consent to send automated text messages to him.

41. The unauthorized text message that was sent by Defendants, as alleged herein, harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed Van

<sup>14</sup> <https://twitter.com/brooksbrasfield/status/1157816385650778113>

<sup>15</sup> *Id.*

Elzen's use and enjoyment of his cellular phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

42. The unauthorized text message also wasted Van Elzen's time, which he spent reading and clicking on the link in the text message to see who was responsible for sending the autodialed text message to him.

43. Seeking redress for these injuries, Van Elzen, on behalf of himself and a Class of similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed text messages to cellular telephones.

### CLASS ALLEGATIONS

#### Class Treatment Is Appropriate for Plaintiff's TCPA Claim

44. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and all others similarly situated and seeks certification of the following Class:

**Autodialed No Consent Class:** All persons in the United States who from four years prior to the filing of this action through the date notice is disseminated (1) Defendants text messaged, (2) on the person's cellular telephone number, (3) using a text messaging platform substantially similar to the text messaging platform Defendants used to text message Plaintiff, (4) for whom the Defendants claim (a) they obtained prior express consent in the same manner as the Defendants claim they supposedly obtained prior express consent to text message Plaintiff, or (b) they did not obtain prior express consent.

45. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendants or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons;

and (6) persons whose claims against the Defendants have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definition following appropriate discovery.

46. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

47. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) whether the Defendants used an automatic telephone dialing system to send text messages to Plaintiff and the members of the Autodialed No Consent Class;
- (b) whether the Defendants sent the text messages to Plaintiff and the members of the Autodialed No Consent Class without the necessary consent;
- (c) whether Defendants' conduct constitutes a violation of the TCPA; and
- (d) whether members of the Class are entitled to treble damages based on the willfulness of Defendants' conduct.

48. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff has no interests antagonistic to those of the Class, and the Defendants have no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Class.

49. **Appropriateness:** This class action is also appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Class and as a

whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendants' business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendants' conduct with respect to the Class, not on facts or law applicable only to Plaintiff. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendants' misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

**FIRST CAUSE OF ACTION**  
**Telephone Consumer Protection Act**  
**(Violations of 47 U.S.C. § 227)**  
**(On Behalf of Plaintiff and the Autodialed No Consent Class)**

50. Plaintiff repeats and realleges paragraphs 1 through 49 of this Complaint and incorporates them by reference.

51. Defendants sent unwanted text messages to cellular telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent Class using an autodialer.

52. These text messages were sent *en masse* without the consent of the Plaintiff and the other members of the Autodialed No Consent Class to receive such text messages.

53. Defendants' conduct was negligent, wilful, or knowing.

54. Defendants, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' conduct, Plaintiff and the other members of the Autodialed No Consent Class are each entitled to between \$500 and \$1,500 for each and every text message.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Van Elzen, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying the Class as defined above, and appointing Plaintiff as the representative of the Class and his attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendants' actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendants to cease all unsolicited texting activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Van Elzen requests a jury trial.

Respectfully Submitted,

**DAVID VAN ELZEN**, individually and on behalf  
of those similarly situated individuals

Dated: May 6, 2020

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*Attorneys for Plaintiff Van Elzen and the putative Class*

*\*Pro Hac Vice motions forthcoming.*

# **EXHIBIT K**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**CODY ASKINS LLC**, a Missouri limited  
liability company, **8 PERCENT NATION  
LLC**, a Missouri limited liability company,  
and **CODY ASKINS**, a Missouri individual,

*Defendants.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Plaintiff” or “Van Elzen”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Cody Askins LLC (“Defendant” or “Cody Askins”), Defendant 8 Percent Nation LLC (“Defendant” or “8 Percent”), and Defendant Cody Askins (“Defendant” or “Askins”) the CEO and owner of the other two Defendant companies, to stop the Defendants from violating the Telephone Consumer Protection Act by making pre-recorded calls to consumers’ cellular telephone numbers without consent. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Van Elzen, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

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**PARTIES**

1. Plaintiff David Van Elzen is a resident of Menasha, Wisconsin.



1           8.       When Congress enacted the TCPA in 1991, it found that Americans were receiving  
2 more than 18 million robocalls every day. 105 Stat. 2394 at § 2(3).

3           9.       By 2003, due to more powerful autodialing technology, Americans were receiving  
4 more than 100 million robocalls every day. In re Rules and Regulations Implementing the TCPA of  
5 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

6           10.      The problems Congress identified when it enacted the TCPA have only grown  
7 exponentially in recent years.

8           11.      Industry data shows that the number of robocalls made each month increased from 831  
9 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

10          12.      According to online robocall tracking service “YouMail,” 4.3 billion robocalls were  
11 placed in June 2022 alone, at a rate of 144.3 million calls per day. [www.robocallindex.com](http://www.robocallindex.com) (last  
12 visited July 17, 2022).

13          13.      The FCC also has received an increasing number of complaints about unwanted calls,  
14 with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC,  
15 Consumer Complaint Data Center, [www.fcc.gov/consumer-help-center-data](http://www.fcc.gov/consumer-help-center-data).

16          14.      “Robocalls and telemarketing calls are currently the number one source of consumer  
17 complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC  
18 chairman.<sup>1</sup>

19          15.      “The FTC receives more complains about unwanted calls than all other complaints  
20 combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules*  
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28 <sup>1</sup> <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

1 *and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed  
2 Rulemaking, CG Docket No. 02-278, at 2 (2016).<sup>2</sup>

### 3 COMMON ALLEGATIONS

4 16. Defendant Askins is a sales trainer and conducts training and coaching programs for  
5 insurance agents and agencies.<sup>3</sup>

6 17. Defendant Askins also organizes events, conferences, and contests, to promote their  
7 training programs and to solicit agents across the U.S. to purchase their training services and products.  
8

9 18. Defendant Askins owns and operates several companies to conduct these various  
10 training programs and events to get more and more insurance agents to purchase their training  
11 services, including, Defendant 8 Percent Nation LLC and Defendant Cody Askins LLC.<sup>4</sup>

12 19. Defendant 8 Percent Nation LLC operates using the registered alias “Cody Askins,  
13 LLC” and Defendant Cody Askins LLC operates using the registered alias, “8 Percent Nation”,  
14 leaving no doubt that both these companies operate in unison, towards maximizing the sales for  
15 Defendant Askins’ products and services.  
16

17 20. Defendants place telemarketing cold calls to their prospective consumers, insurance  
18 agents across the U.S., to solicit their training services and events to the consumers through  
19 Defendants Cody Askins LLC and Defendant 8 Percent Nation.

20 21. Defendants place cold calls using pre-recorded voice messages to solicit their products  
21 and services to consumers, despite having never obtained the necessary consent required to place the  
22 calls.  
23

24  
25 \_\_\_\_\_  
26 <sup>2</sup> [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-ftc-bureau-  
27 consumer-protection-federal-communications-commission-rules-  
28 regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)

<sup>3</sup> <https://www.linkedin.com/in/cody-askins-029497111/>

<sup>4</sup> <https://www.linkedin.com/company/cody-askins-llc/about/>



1 products or services. Plaintiff Van Elzen told the Defendant's employee that he did not wish to be  
2 contacted by or on behalf of the Defendant.

3 30. The unauthorized prerecorded call that Plaintiff received from Defendants has harmed  
4 Plaintiff Van Elzen in the form of annoyance, nuisance, and invasion of privacy, occupied his phone  
5 line, and disturbed the use and enjoyment of his phone, in addition to the wear and tear on the phone's  
6 hardware (including the phone's battery), the consumption of memory on the phone.

7  
8 31. Seeking redress for these injuries, Plaintiff Van Elzen, on behalf of himself and a Class  
9 of similarly situated individuals, brings suit under the TCPA.

### 10 CLASS ALLEGATIONS

11 32. Plaintiff Van Elzen brings this action pursuant to Federal Rules of Civil Procedure  
12 23(b)(2) and 23(b)(3) and seeks certification of the following Class:

13  
14 **Pre-recorded No Consent Class:** All persons in the United States who from four years prior  
15 to the filing of this action through class certification (1) any of the Defendants called (2) on  
16 their cellular telephone number (3) using the same or a similar artificial or pre-recorded voice  
17 messages used to call Plaintiff.

18 33. The following individuals are excluded from the Class: (1) any Judge or Magistrate  
19 presiding over this action and members of their families; (2) each Defendant, its subsidiaries, parents,  
20 successors, predecessors, and any entity in which either Defendant or their parents have a controlling  
21 interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4)  
22 persons who properly execute and file a timely request for exclusion from the Class; (5) the legal  
23 representatives, successors or assigns of any such excluded persons; and (6) persons whose claims  
24 against the Defendants have been fully and finally adjudicated and/or released. Plaintiff Van Elzen  
25 anticipates the need to amend the Class definition following appropriate discovery.

1           34.     **Numerosity and Typicality:** On information and belief, there are hundreds, if not  
2 thousands of members of the Class such that joinder of all members is impracticable, and Plaintiff is  
3 a member of the Class.

4           35.     **Commonality and Predominance:** There are many questions of law and fact  
5 common to the claims of the Plaintiff and the Class, and those questions predominate over any  
6 questions that may affect individual members of the Class. Common questions for the Class include,  
7 but are not necessarily limited to the following:  
8

- 9           (a)     whether Defendants made calls using a prerecorded voice;
- 10          (b)     whether Defendant made these calls without consent;
- 11          (c)     whether the calls violate the TCPA;
- 12          (d)     whether members of the Class are entitled to treble damages based on the willfulness  
13 of Defendants' conduct.

14           36.     **Adequate Representation:** Plaintiff Van Elzen will fairly and adequately represent  
15 and protect the interests of the Class, and has retained counsel competent and experienced in class  
16 actions. Plaintiff Van Elzen has no interests antagonistic to those of the Class, and the Defendants  
17 have no defenses unique to Plaintiff. Plaintiff Van Elzen and his counsel are committed to vigorously  
18 prosecuting this action on behalf of the members of the Class, and have the financial resources to do  
19 so. Neither Plaintiff Van Elzen nor his counsel have any interest adverse to the Class.  
20

21           37.     **Appropriateness:** This class action is also appropriate for certification because the  
22 Defendants have acted or refused to act on grounds generally applicable to the Class and as a whole,  
23 thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct  
24 toward the members of the Class and making final class-wide injunctive relief appropriate.  
25 Defendants' business practices apply to and affect the members of the Class uniformly, and Plaintiff's  
26 challenge of those practices hinges on Defendants' conduct with respect to the Class as a whole, not  
27  
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1 on facts or law applicable only to Plaintiff Van Elzen. Additionally, the damages suffered by  
2 individual members of the Class will likely be small relative to the burden and expense of individual  
3 prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually  
4 impossible for the members of the Class to obtain effective relief from Defendant's misconduct on  
5 an individual basis. A class action provides the benefits of single adjudication, economies of scale,  
6 and comprehensive supervision by a single court.

7  
8 **COUNT I**  
9 **Telephone Consumer Protection Act**  
10 **(Violation of 47 U.S.C. § 227)**  
11 **(On Behalf of Plaintiff Van Elzen and the Pre-recorded No Consent Class)**

12 38. Plaintiff Van Elzen repeats and realleges the prior paragraphs of this Complaint and  
13 incorporates them by reference herein.

14 39. Defendants and/or its agents transmitted unwanted telephone calls to Plaintiff Van  
15 Elzen and the other members of the Pre-recorded No Consent Class using a pre-recorded voice  
16 message.

17 40. These pre-recorded voice calls were made *en masse* without the prior express written  
18 consent of the Plaintiff Van Elzen and the other members of the Pre-recorded No Consent Class.

19 41. The Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of  
20 Defendants' conduct, Plaintiff Van Elzen and the other members of the Pre-recorded No Consent  
21 Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each  
22 violation.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following  
25 relief:

- 1 a. An order certifying this case as a class action on behalf of the Class as defined above;  
2 appointing Plaintiff as the representative of the Class; and appointing his attorneys as  
3 Class Counsel;
- 4 b. An award of damages and costs;
- 5 c. An order declaring that Defendants' actions, as set out above, violate the TCPA;
- 6 d. An injunction requiring Defendants to cease all unsolicited calling activity, and to  
7 otherwise protect the interests of the Class; and
- 8 e. Such further and other relief as the Court deems just and proper.
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11 **JURY DEMAND**

12 Plaintiff Van Elzen requests a jury trial.

13 DATED this 24th day of July, 2022.

14  
15 **DAVID VAN ELZEN**, individually and on behalf of  
16 all others similarly situated,

17 /s/ Stefan Coleman

18 Stefan Coleman (FL Bar no. 30188)  
19 law@stefancoleman.com  
20 COLEMAN PLLC  
21 66 Flagler Street, Suite 900  
22 Miami, FL 33130  
23 Telephone: (877) 333-9427  
24 Facsimile: (888) 498-8946

25 Avi R. Kaufman  
26 kaufman@kaufmanpa.com  
27 KAUFMAN P.A.  
28 237 South Dixie Highway, Floor 4  
Coral Gables, FL 33133  
Telephone: (305) 469-5881

*Counsel for Plaintiff and the putative Class*

# **EXHIBIT L**

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN**

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**ADVISORS IGNITE USA LLC**, an Illinois  
limited liability company, and **STEVEN  
DEJOHN**, an Illinois individual,

*Defendants.*

Case No.

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

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**CLASS ACTION COMPLAINT**

Plaintiff David Van Elzen (“Plaintiff” or “Van Elzen”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Advisors Ignite USA LLC (“Defendant” or “Advisors Ignite”) and Defendant Steven DeJohn (“Defendant” or “DeJohn”) the CEO and owner of the Defendant Advisors Ignite, to stop the Defendants from violating the Telephone Consumer Protection Act by making pre-recorded calls to consumers’ cellular telephone numbers without consent. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Van Elzen, for this Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

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**PARTIES**

1. Plaintiff David Van Elzen is a resident of Menasha, Wisconsin.
2. Defendant Advisors Ignite USA is a limited liability company headquartered in Downers Grove, Illinois. Defendant Advisors Ignite conducts business throughout this District and the US.



1 10. Industry data shows that the number of robocalls made each month increased from 831  
2 million in September 2015 to 4.7 billion in December 2018—a 466% increase in three years.

3 11. According to online robocall tracking service “YouMail,” 4.3 billion robocalls were  
4 placed in June 2022 alone, at a rate of 144.3 million calls per day. [www.robocallindex.com](http://www.robocallindex.com) (last  
5 visited July 17, 2022).

6 12. The FCC also has received an increasing number of complaints about unwanted calls,  
7 with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC,  
8 Consumer Complaint Data Center, [www.fcc.gov/consumer-help-center-data](http://www.fcc.gov/consumer-help-center-data).

9 13. “Robocalls and telemarketing calls are currently the number one source of consumer  
10 complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC  
11 chairman.<sup>1</sup>

12 14. “The FTC receives more complains about unwanted calls than all other complaints  
13 combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules*  
14 *and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed  
15 Rulemaking, CG Docket No. 02-278, at 2 (2016).<sup>2</sup>

## 18 COMMON ALLEGATIONS

19 15. Defendant Advisors Ignite is a marketing company that offers several lead programs  
20 for insurance agents to help them improve their lead generation and close more business.

21 16. Defendant Steven DeJohn is the President and Founder of Advisors Ignite.  
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26 <sup>1</sup> <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

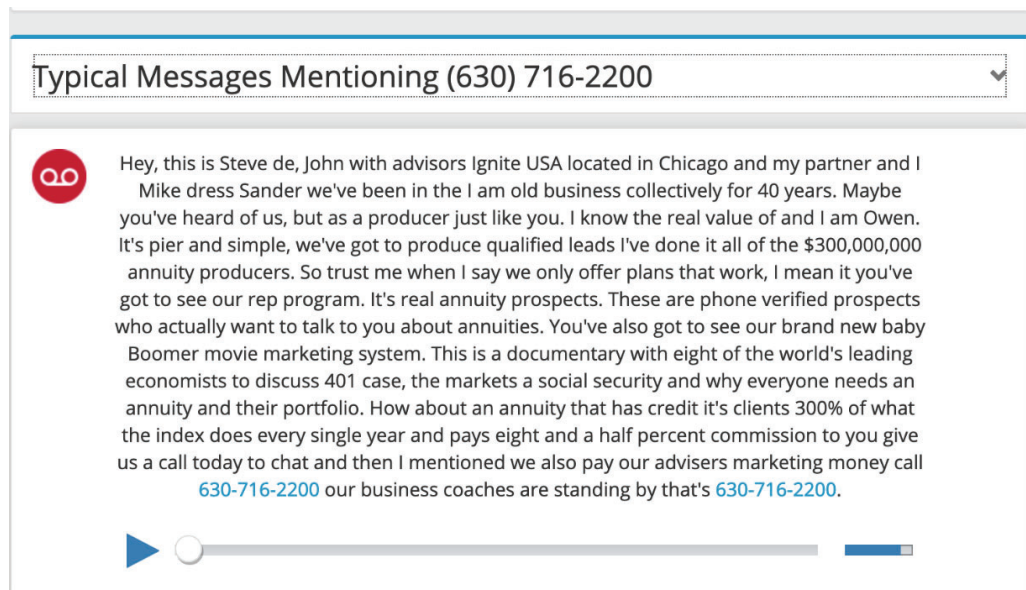
27 <sup>2</sup> [https://www.ftc.gov/system/files/documents/advocacy\\_documents/comment-staff-ftc-bureau-  
28 consumer-protection-federal-communications-commission-rules-  
regulations/160616robocallscomment.pdf](https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf)

1 17. At DeJohn's direction, Advisors Ignite places telemarketing cold calls to their  
2 prospective target audience, insurance agents across the U.S., to solicit their training services and lead  
3 generation programs.

4 18. Defendants place cold calls using pre-recorded voice messages to solicit their products  
5 and services to insurance agents, despite having never obtained the necessary consent required to  
6 place the calls.

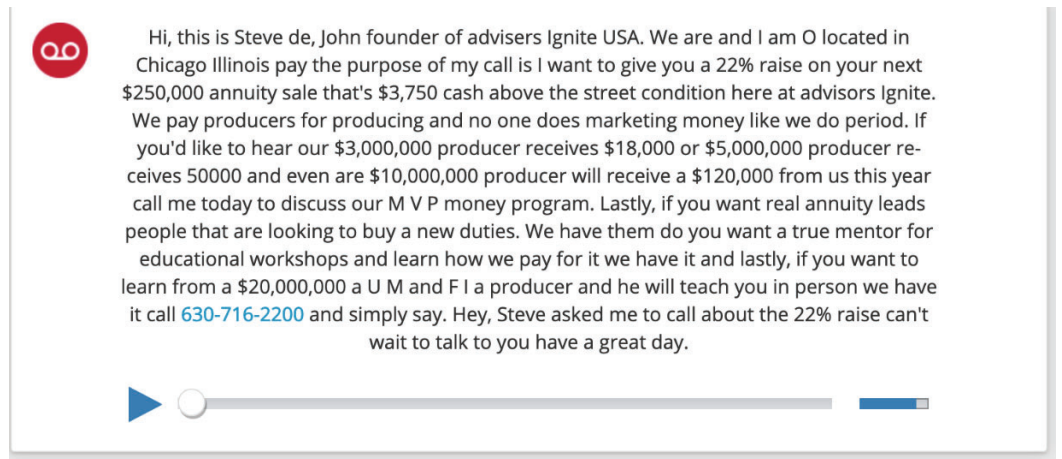
7  
8 19. Defendants place these calls using scripted voice messages drafted and recorded by  
9 Defendant DeJohn himself, as with the pre-recorded calls received by Plaintiff Van Elzen and other  
10 members of the Class.

11 20. Other individuals have reported receiving similar unsolicited prerecorded calls by  
12 Advisors Ignite and Stephen DeJohn. For instance:



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28 <sup>3</sup> <https://directory.youmail.com/directory/phone/6307162200>



21. In response to these calls, Plaintiff Van Elzen files this lawsuit seeking injunctive relief requiring the Defendants to cease from violating the Telephone Consumer Protection Act, as well as an award of statutory damages to the members of the Class and costs.

**PLAINTIFF VAN ELZEN'S ALLEGATIONS**

22. Plaintiff Van Elzen is the subscriber of the cell phone number ending xxx-xxx-3152.

23. On June 22, 2022, at 11:56 AM, Plaintiff received a call to his cell phone from the phone number (630) 919-8337. Plaintiff was not able to answer the call and it resulted in a prerecorded voice message.

24. The prerecorded voice message drafted and recorded by Steven DeJohn stated: "Hi, this is Steve DeJohn founder of Advisors Ignite USA. We are an IMO located in Chicago, Illinois. Hey, the purpose of my call is I want to give you a 22% raise on your next \$250,000 annuity sale. That's \$3,750 cash above street commission. We at Advisors Ignite we pay producers for producing and no one does marketing money like we do. Period. If you'd like to hear how a \$3 million dollar producer receives \$18,000 or a \$5 million dollar producer receives \$50,000 and even our \$10 million dollar producer will receive \$120,000 from us this year, call me today to discuss our MVP money program. Lastly, if you want real annuity leads people that are looking to buy annuities, we

<sup>4</sup> <https://directory.youmail.com/directory/phone/6307162200>



1 persons who properly execute and file a timely request for exclusion from the Class; (5) the legal  
2 representatives, successors or assigns of any such excluded persons; and (6) persons whose claims  
3 against the Defendants have been fully and finally adjudicated and/or released. Plaintiff Van Elzen  
4 anticipates the need to amend the Class definition following appropriate discovery.

5         30.     **Numerosity and Typicality:** On information and belief, there are hundreds, if not  
6 thousands of members of the Class such that joinder of all members is impracticable, and Plaintiff is  
7 a member of the Class.  
8

9         31.     **Commonality and Predominance:** There are many questions of law and fact  
10 common to the claims of the Plaintiff and the Class, and those questions predominate over any  
11 questions that may affect individual members of the Class. Common questions for the Class include,  
12 but are not necessarily limited to the following:

- 13             (a)     whether Defendants made calls using a prerecorded voice;
- 14             (b)     whether Defendants made these calls without consent;
- 15             (c)     whether the calls violate the TCPA;
- 16             (d)     whether members of the Class are entitled to treble damages based on the willfulness  
17                     of Defendants' conduct.  
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19         32.     **Adequate Representation:** Plaintiff Van Elzen will fairly and adequately represent  
20 and protect the interests of the Class, and has retained counsel competent and experienced in class  
21 actions. Plaintiff Van Elzen has no interests antagonistic to those of the Class, and the Defendants  
22 have no defenses unique to Plaintiff. Plaintiff Van Elzen and his counsel are committed to vigorously  
23 prosecuting this action on behalf of the members of the Class, and have the financial resources to do  
24 so. Neither Plaintiff Van Elzen nor his counsel have any interest adverse to the Class.  
25

26         33.     **Appropriateness:** This class action is also appropriate for certification because the  
27 Defendants have acted or refused to act on grounds generally applicable to the Class and as a whole,  
28

1 thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct  
2 toward the members of the Class and making final class-wide injunctive relief appropriate.  
3 Defendants' business practices apply to and affect the members of the Class uniformly, and Plaintiff's  
4 challenge of those practices hinges on Defendants' conduct with respect to the Class as a whole, not  
5 on facts or law applicable only to Plaintiff Van Elzen. Additionally, the damages suffered by  
6 individual members of the Class will likely be small relative to the burden and expense of individual  
7 prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually  
8 impossible for the members of the Class to obtain effective relief from Defendant's misconduct on  
9 an individual basis. A class action provides the benefits of single adjudication, economies of scale,  
10 and comprehensive supervision by a single court.  
11

12 **COUNT I**  
13 **Telephone Consumer Protection Act**  
14 **(Violation of 47 U.S.C. § 227)**  
15 **(On Behalf of Plaintiff Van Elzen and the Pre-recorded No Consent Class)**

16 34. Plaintiff Van Elzen repeats and realleges the prior paragraphs of this Complaint and  
17 incorporates them by reference herein.

18 35. Defendants and/or its agents transmitted unwanted telephone calls to Plaintiff Van  
19 Elzen and the other members of the Pre-recorded No Consent Class using a pre-recorded voice  
20 message.

21 36. These pre-recorded voice calls were made *en masse* without the prior express written  
22 consent of the Plaintiff Van Elzen and the other members of the Pre-recorded No Consent Class.

23 37. The Defendants have, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of  
24 Defendants' conduct, Plaintiff Van Elzen and the other members of the Pre-recorded No Consent  
25 Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each  
26 violation.  
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**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a. An order certifying this case as a class action on behalf of the Class as defined above; appointing Plaintiff as the representative of the Class; and appointing his attorneys as Class Counsel;
- b. An award of damages and costs;
- c. An order declaring that Defendants’ actions, as set out above, violate the TCPA;
- d. An injunction requiring Defendants to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and
- e. Such further and other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff Van Elzen requests a jury trial.

DATED this 28th day of July, 2022.

**DAVID VAN ELZEN**, individually and on behalf of all others similarly situated,

/s/ Stefan Coleman

Stefan Coleman (FL Bar no. 30188)  
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66 Flagler Street, Suite 900  
Miami, FL 33130  
Telephone: (877) 333-9427  
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Avi R. Kaufman  
kaufman@kaufmanpa.com  
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237 South Dixie Highway, Floor 4

Coral Gables, FL 33133  
Telephone: (305) 469-5881

*Counsel for Plaintiff and the putative Class*

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# **EXHIBIT M**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

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DAVID VAN ELZEN,

Plaintiff,

Case No. 24-1206

v.

AMERICAN HOME SHIELD  
CORPORATION,

Defendant.

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**DEFENDANT AMERICAN HOME SHIELD CORPORATION'S  
RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

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Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and the Civil Local Rules of the U.S. District for the Eastern District of Wisconsin, Defendant American Home Shield Corporation ("AHS") by and through the undersigned attorneys, hereby submits its responses and objections to Plaintiff David Van Elzen's ("Van Elzen") First Set of Interrogatories.

**PRELIMINARY STATEMENT OF OBJECTIONS**

Pursuant to the Court's December 20, 2024 scheduling order, discovery in this case has been bifurcated, and at present, only discovery related to Plaintiff's consent to be contacted by Defendant has been opened. Accordingly, the discovery Plaintiff presently seeks is premature and has yet to be opened by the Court. To the extent Plaintiff's discovery seeks non-class-related information regarding his individual consent to be contacted, Defendant has provided objections and responses below; however, to the extent Plaintiff seeks class discovery or discovery beyond the issue of individual consent, Defendant provides the below objections and will meet and confer with Plaintiff's counsel at the appropriate time following the resolution of Defendant's anticipated summary judgment motion and an order opening class discovery.

## GENERAL OBJECTIONS

Defendant objects generally to the Interrogatories on the grounds set forth below:

1. Defendant objects to each and every interrogatory and related definitions and instructions that purport to impose obligations different than or in addition to those imposed by the Federal Rules of Civil Procedure, the Local Rules of the United States District Court for the Eastern District of Wisconsin, applicable Standing Orders, or any other applicable law or agreement between the parties to this litigation. Defendant will not comply with any attempt to impose obligations that exceed those imposed by the above authorities.

2. Defendant objects to each and every interrogatory and related definitions and instructions to the extent that they: (i) seek information that are neither relevant to, nor reasonably calculated to lead to, any party's claims or defenses in the action; (ii) impose a burden disproportionate to the needs of the case; (iii) seek documents or information beyond the scope of permissible discovery; or (iv) are unreasonably cumulative or duplicative.

3. Defendant objects to each and every interrogatory, related definitions, and instructions as premature, overbroad, irrelevant, and unduly burdensome to the extent they seek information that go beyond Plaintiff's individual claims and pertain to class claims. Pursuant to the Scheduling Conference, discovery is bifurcated, with the current, first phase of discovery limited to Plaintiff's individual claims, and in particular, whether Defendant received consent to contact Plaintiff. Any interrogatory pertaining to class claims and not Plaintiff's individual allegations are therefore premature, irrelevant, overbroad, and unduly burdensome.

4. Defendant objects to the Interrogatories to the extent they seek information exempt from discovery and protected from disclosure pursuant to any privilege, immunity or obligation of confidentiality, including, without limitation, the attorney-client privilege, the attorney work product doctrine, and any privilege created by statute or common law. The absence of a specific objection on the grounds of privilege should not be interpreted as evidence that Defendant does not object to an Interrogatory on the basis of an applicable privilege. Nothing contained in this

Response is intended to be nor should be considered a waiver of any attorney-client privilege, work product doctrine, the right of privacy, or any other applicable privilege or doctrine, and to the extent that any Interrogatory may be construed as calling for disclosure of information protected by such privileges or doctrines, a continuing objection to each and every such Interrogatory is hereby imposed.

5. To the extent that Plaintiff disagrees with or does not understand any General or Specific Objection to an Interrogatory, Defendant is willing to meet and confer with Plaintiff in a good-faith effort to address Plaintiffs' questions or concerns.

6. In responding to these Interrogatories, Defendant does not, in any way, waive or intend to waive, but rather intends to preserve and are preserving the following:

- a. All objections as to competency, relevancy, materiality, authenticity, and admissibility of any objections, responses and/or information provided in response to the Interrogatories;
- b. All rights to object on any grounds to the use in evidence, at trial, at any hearing, or at any proceeding of any of these objections, responses, and/or information provided in response to the Interrogatories; and
- c. All rights to object on any grounds at any time to a demand for any further response to these or any other Interrogatories.

7. Defendant's investigation of the claims and defenses in this case remains ongoing, and Defendant reserves the right to supplement their responses to these Interrogatories at a later date.

8. Nothing contained in any response herein shall be deemed to be an admission, concession, or waiver by Defendant as to the validity of any claim, allegation, or defense that has been or may be asserted by Plaintiff in this action, or to the relevance or admissibility of any documents or information produced in the litigation or provided in these responses.

## **OBJECTIONS TO DEFINITIONS**

1. Defendant objects to Plaintiff's definition of "AHS," "You," or "Defendant" as vague, ambiguous, overly broad, and unduly burdensome on the grounds that it includes entities not controlled, and persons never employed, by Defendant or their direct and indirect subsidiaries.

2. Defendant objects to the definition of "Identify" with respect to a "person" as vague, ambiguous, overbroad, and unduly burdensome, including on the ground that it seeks to require Defendant to conduct an inquiry into and provide the individual's "name, home address, telephone number, business name, business address, business telephone number and a description of each such person's connection with the events in question."

3. Defendant objects to the definition of "Identify" with respect to any "document" as vague, ambiguous, overbroad, and unduly burdensome, including on the ground that it seeks to require Defendant to conduct an inquiry into and provide "the title and date of each such document, the name and address of the party or parties responsible for the preparation of each such document, the name and address of the party who requested or required the preparation and on whose behalf it was prepared, the name and address of the recipient or recipients to each such document and the present location of any and all copies of each such document, and the names and addresses of any and all persons who have custody or control of each such document or copies thereof."

## **OBJECTION TO RELEVANT TIME FRAME**

Defendant objects to the relevant time period, which is defined as September 22, 2020 through the present and includes information predating September 22, 2020 concerning events or transactions after September 22, 2020, as overbroad, including on the ground that discovery is bifurcated, and the current, first phase of discovery is limited to the scope of Plaintiff's individual claims. Accordingly, to the extent Defendant provides a response to the Interrogatories, Defendant's response will be limited to the issue of whether Defendant received consent to contact Plaintiff, and the text messages Plaintiff alleges to have received from Defendant in August 2024.

**SPECIFIC RESPONSES AND OBJECTIONS**

**INTERROGATORY NO. 1:**

Identify the total number of calls, including texts, made by Defendant or on Defendant’s behalf to Plaintiff. For each such call/text, please identify the date, time, content of the call, the maker of the call, the reason the call was made, the telephone number from which the call was made.

**RESPONSE TO INTERROGATORY NO. 1:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting (1) “the total number of calls” made by Defendant or on Defendant’s behalf and (2) “the reason the call was made.” Defendant also objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows:  
The following calls and text messages were made to Plaintiff on Defendant’s behalf:

<b>Date of Text Message</b>	<b>Content</b>	<b>Sender’s Number</b>	<b>Reason</b>
August 24, 2024	Hi Davidvanelzan@yahoo.com! This is Alex from American Home Shield! Thank you for requesting information about our home warranties! A member of our team will call you as soon as they are available. In the meantime, if you would rather schedule a call on your own availability, you can do so by texting with me here or call us anytime	872-266-2986	Respond to Plaintiff’s Inquiry

	between 7am-10pm CDT Monday to Friday, and 7am-8pm CDT on Saturday or Sunday. Reply "Remove" to opt out.		
August 26, 2024	We have time this week when you are ready to find out more about American Home Shield, we would love to assist. – American Home Shield	872-266-2986	Inquiry Follow Up
August 26, 2024	Outbound call	844-995-6393	Inquiry Follow Up
August 28, 2024	Are you still interested in learning more about American Home Shield? – American Home Shield	872-266-2986	Inquiry Follow Up
August 29, 2024	Hey! It's Alex from American Home Shield. You filled out an online form requesting more info and said that we could text you. Is it still ok to contact you here? Text "YES" to be connected to an agent now. Text "remove" to Opt-Out. To learn more, call 844-604-1900 or visit the link below: <a href="https://ahspro.co/Jp9C5h">https://ahspro.co/Jp9C5h</a>	872-266-2986	Inquiry Follow Up

**INTERROGATORY NO. 2:**

Identify how you obtained Plaintiff's telephone number, including, but not limited to, the person(s) from whom you obtained Plaintiff's telephone number, the relationship between you and any person(s) from whom you obtained Plaintiff's telephone number, when you obtained Plaintiff's telephone number, and the reason(s) you obtained Plaintiff's telephone number.

**RESPONSE TO INTERROGATORY NO. 2:**

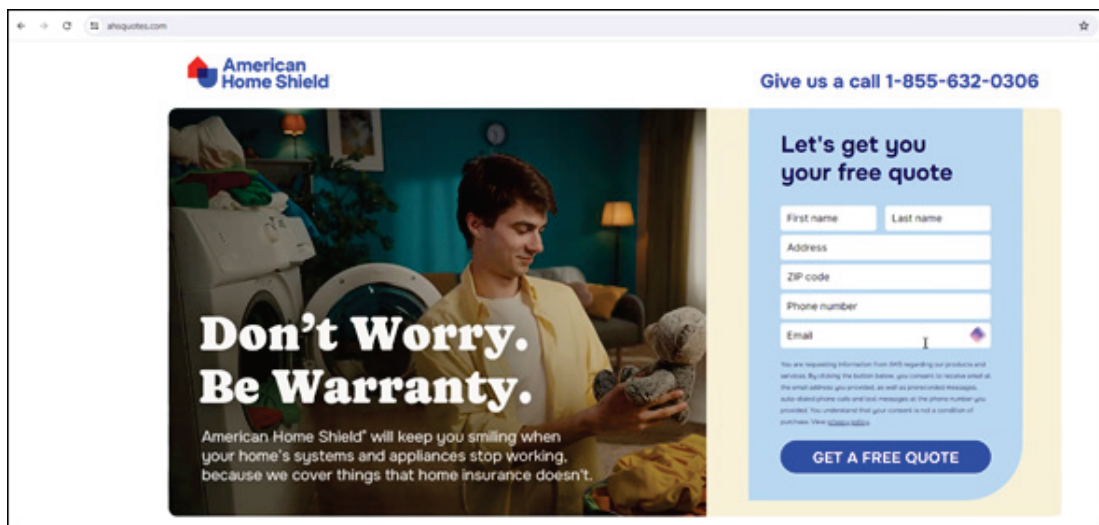
Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant further objects to this Interrogatory to the extent it

seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: On or around August 24, 2024, the user arrived at a warranty comparison page (<https://top10homewarrantyranking.com/>). That ranking page led them to AHS's website, [ahsquotes.com](https://ahsquotes.com), where they submitted an online request for information about home warranties. The person completing the form provided personal contact information for David Van Elzen (including the phone number Mr. Van Elzen was contacted at) and then clicked a button to "Get A Free Quote." Immediately above that button was a statement confirming consent to receive text messages:

"You are requesting information from AHS regarding our products and services. By clicking the button below, you consent to receive email at the email address you provided, as well as prerecorded messages, auto-dialed phone calls and text messages at the phone number you provided. You understand that your consent is not a condition of purchase. View [privacy policy](#)."

An exemplar of how this information is presented on screen is copied-and-pasted below:



**INTERROGATORY NO. 3:**

Identify all entities or vendors involved in making outbound calls/texts promoting your

goods and services to Plaintiff. This includes, but is not limited to, (a) third parties that you contract with who make telemarketing calls and/or provide leads, and (b) the dialing system platform or provider used to make calls/texts.

**RESPONSE TO INTERROGATORY NO. 3:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting, without limitation, information on “all” vendors involved in making outbound calls promoting Defendant’s goods and services to Plaintiff, as opposed to seeking information to establish a relevant fact. Defendant also objects to this Interrogatory as vague with respect to the phrase “promoting your goods and serves to Plaintiff.” Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant is willing to meet and confer with Plaintiff’s counsel to understand what information Plaintiff seeks with this Interrogatory and define a reasonable scope.

**INTERROGATORY NO. 4:**

Identify and describe the work of each entity and vendor identified in the above response.

**RESPONSE TO INTERROGATORY NO. 4:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting Defendant to identify and describe the work of all third-

party vendors involved in making outbound calls promoting Defendant's services to Plaintiff, regardless of its relevance to the claims and defenses at issue in this case. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant is willing to meet and confer with Plaintiff's counsel to understand what information Plaintiff seeks with this Interrogatory and define a reasonable scope.

**INTERROGATORY NO. 5:**

Identify by make, model, structure and location the system(s), platform(s), and/or equipment used by you, or any vendor, to contact the Plaintiff.

**RESPONSE TO INTERROGATORY NO. 5:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to the claims and defenses at issue in this case. Defendant further objects to this Interrogatory to the extent it seeks information outside of its possession, custody, or control. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant is willing to meet and confer with Plaintiff's counsel to understand what information Plaintiff seeks with this Interrogatory and define a reasonable scope.

**INTERROGATORY NO. 6:**

State all facts in support of any affirmative defenses you have raised.

**RESPONSE TO INTERROGATORY NO. 6:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant further objects to this Interrogatory as overbroad, unduly burdensome, not proportional to the needs of the case based on its request—within one compound Interrogatory—for the factual basis for each affirmative defense asserted. Defendant further objects to this Interrogatory as impermissibly compound and therefore as exceeding the interrogatory limit set by the Federal Rules of Civil Procedure. Defendant further objects to this Interrogatory as premature and prejudicial because it has not completed its investigation of the facts and documents relating to this case and has not fully completed its discovery in this action. Defendant further objects to this Interrogatory to the extent it seeks information outside of its possession, custody, or control.

Subject to and without waiving the foregoing objections, Defendant responds as follows: The only affirmative defense currently at issue for purposes of the present discovery is the issue of consent to contact Mr. Van Elzen, including the TCPA's related safe harbor defense for calls placed in error, and Defendant has not yet been able to complete discovery on that topic. With express reservation of its rights to amend this response to reflect additional evidence revealed during discovery, Defendant directs Plaintiff to the letter that was sent on November 5, 2024, to Plaintiff's counsel, which explains in detail how Defendant received consent to contact Plaintiff and the facts supporting its defenses to consent. A copy of that letter is attached to these responses and objections and incorporated by reference into this response. Defendant also directs Plaintiff to its response to Interrogatory No. 2.

**INTERROGATORY NO. 7:**

Have you ever received formal or informal complaints concerning telemarketing? If so, identify the complaint, the date of the complaint, and person(s) making the complaint, including, but not limited to, the complainant's name, address, telephone number, and email address.

**RESPONSE TO INTERROGATORY NO. 7:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory on the grounds and to the extent that it pertains to class discovery as opposed to Plaintiff's individual claims and is therefore overbroad, unduly burdensome, irrelevant, and not proportional to the needs of the case. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to the claims and defenses at issue in this case. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant objects to the Interrogatory as premature and irrelevant to the issue of whether AHS received consent to contact Plaintiff, which is the only issue during this first phase of discovery. To the extent this Interrogatory is limited to Plaintiff's experience, AHS will review its records and will produce any documents that are responsive to this Interrogatory, if any documents exist.

**INTERROGATORY NO. 7:**

Identify what type of consent or permission, if any, you or anyone on your behalf obtained from Plaintiff to make telemarketing calls to his telephone number.

**RESPONSE TO INTERROGATORY NO. 8:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory to the extent it seeks information outside of its possession, custody, or control. Defendant further objects to this Interrogatory as duplicative of Interrogatory No. 2.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant incorporates by reference its responses and objections to Interrogatory No. 2.

**INTERROGATORY NO. 8:**

To the extent that you contend there is consent as identified in response to interrogatory no. 8, explain when, how, and where you obtained consent. To the extent you contend that prior consent or permission was obtained through a website, identify the web address of the website, including any specific consent language on the website and the date such language was added and/or removed from the website. To the extent you contend that prior consent or permission was obtained through a means other than a website, identify any document reflecting the consent or permission, including any specific consent language on the document.

**RESPONSE TO INTERROGATORY NO. 9:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to Plaintiff's individual claims. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege

or work product doctrine. Defendant also objects to this Interrogatory as duplicative of Interrogatory Nos. 2 and 8.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant incorporates by reference its responses and objections to Interrogatory No. 2.

**INTERROGATORY NO. 9:**

Identify any policies, procedures, training protocols, practices, or protocols you maintain concerning compliance with the Telephone Consumer Protection Act, including the date(s) any such policies, procedures, education, practices, or protocols went into effect.

**RESPONSE TO INTERROGATORY NO. 10:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory on the grounds and to the extent that it pertains to class discovery as opposed to Plaintiff's individual claims and is therefore overbroad, unduly burdensome, irrelevant, and not proportional to the needs of the case. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to Plaintiff's individual claims. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine. Defendant also objects to this Interrogatory as duplicative of Request for Production No. 5.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant objects to the Interrogatory as premature and irrelevant to the issue of whether AHS received consent to contact Plaintiff, which is the only issue during this first phase of discovery. AHS will review its records and will produce any documents that are responsive to this

Interrogatory, if any documents exist.

**INTERROGATORY NO. 10:**

Identify (by providing the names, addresses, telephone numbers, places of employment and job titles) all persons who have, claim to have, or whom you believe may have knowledge or information pertaining to any fact alleged in the pleadings (as defined in Federal Rule of Civil Procedure 7(a)) filed in this action or any fact underlying the subject matter of this action, including but not limited to the person who made the calls to Plaintiff.

**RESPONSE TO INTERROGATORY NO. 11:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory on the grounds and to the extent that it pertains to class discovery as opposed to Plaintiff's individual claims and is therefore overbroad, unduly burdensome, irrelevant, and not proportional to the needs of the case. Defendant objects to this Interrogatory as compound. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to Plaintiff's individual claims. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: Defendant objects to the Interrogatory as premature and irrelevant to the issue of whether AHS received consent to contact Plaintiff, which is the only issue during this first phase of discovery. If this case survives Defendant's anticipated motion for summary judgment on the issue of consent, Defendant is willing to meet and confer with Plaintiff regarding the appropriate scope of this

Interrogatory, and an appropriate response. Regarding the issue of consent, including the safe harbor defense for errors, Defendant identifies the following:

- Kim Hoffman: Senior Manager of Inside Sales Operations for American Home Shield Corporation.
- Kristina Plumis: Director of Digital Marketing for American Home Shield Corporation.
- Direct Agents Inc.

**INTERROGATORY NO. 11:**

State the specific nature and substance of the knowledge that you believe the persons identified in the response to Interrogatory No. 11 may have.

**RESPONSE TO INTERROGATORY NO. 12:**

Defendant refers to and incorporates the Preliminary Statement, General Objections, and Objections to Definitions and Instructions as though fully set forth herein. Defendant objects to this Interrogatory on the grounds and to the extent that it pertains to class discovery as opposed to Plaintiff's individual claims and is therefore overbroad, unduly burdensome, irrelevant, and not proportional to the needs of the case. Defendant objects to this Interrogatory as overbroad, irrelevant, and unduly burdensome by requesting information that has no relevance to Plaintiff's individual claims. Defendant further objects to this Interrogatory to the extent it seeks confidential or proprietary information, or information protected from disclosure by the attorney-client privilege or work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds as follows: The parties identified in Interrogatory No. 11 will likely have knowledge on information surrounding the issue of consent, including the related safe harbor defense for errors.

Dated: March 28, 2025

s/ Timothy Loose

---

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TLoose@gibsondunn.com

*Attorneys for Defendant, American Home  
Shield Corporation*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on March 28, 2025, I served the foregoing by email on all counsel of record.

/s/ Jamila MacEbong \_\_\_\_\_  
Jamila MacEbong

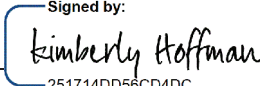
**VERIFICATION**

*David Van Elzen v. American Home Shield Corporation*

United States District Court Case No. 1:24-cv-01206-WCG

I verify under penalty of perjury that Defendant American Home Shield Corporation's Responses and Objections to Plaintiff's First Set of Interrogatories contained in the foregoing document is true and correct to the best of my knowledge, information, and belief as of this 11th day of April, 2025.

Kimberly Hoffman

/s/  Signed by:  
251714DD56CD4DC...

Senior Manager of Inside Sales Operations,  
Frontdoor, Inc.

# EXHIBIT N

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**AMERICAN HOME SHIELD  
CORPORATION**, a Delaware registered  
corporation,

*Defendant.*

Case No. 1:24-cv-01206-WCG

**CLASS ACTION**

**PLAINTIFF'S RESPONSES TO FIRST SET OF INTERROGATORIES**

Plaintiff David Van Elzen responds to Defendant American Home Shield Corporation's first set of interrogatories as follows. Plaintiff objects to all of Defendant's requests to the extent they seek attorney client privileged and/or work product information, and, therefore, construes Defendant's requests to not seek such information. Plaintiff further states:

**RESPONSES TO INTERROGATORIES**

1. Identify and describe all facts relating to your contention that AHS lacked consent to contact you.

ANSWER: Plaintiff was not looking to get a warranty and never provided his contact information to AHS.

2. Identify and describe all facts relating to your contention that the request for a home warranty quote that AHS used to contact you was completed without your consent.

ANSWER: Plaintiff did not fill out a request for a home warranty quote for any company. The email address that the August 24th text message references is [Davidvanelzan@yahoo.com](mailto:Davidvanelzan@yahoo.com), which does not match an email address used by Plaintiff. In addition, the email address above implies that Plaintiff's last name is "Van Elzan" when it is

in fact Van Elzen. Moreover, the August 24 text and the August 29 text both reference Plaintiff filling out a form, but Plaintiff did not fill out any forms regarding a warranty.

3. Identify and describe all electronic devices you own(ed) between June 1-September 30, 2024 that are capable of Internet access, including but not limited to desktop, tablet, or mobile devices.

ANSWER: Plaintiff has a home computer/laptop that has internet access and Plaintiff has an Android phone.

4. Identify and describe the Internet Protocol (“IP”) addresses for all devices identified in your response to Interrogatory No. 3.

ANSWER: Laptop IP is 192.168.4.28. The phone IP is 192.168.4.24.

5. Identify and describe all electronic devices you used between June 1, 2024 to September 30, 2024, including but not limited to desktop, tablet, or mobile devices, that are capable of Internet access, whether or not those devices were owned or regularly used by you.

ANSWER: Plaintiff’s laptop computer and phone.

6. Identify all of your Internet Service Providers from January 1, 2024 to the present.

ANSWER: Plaintiff directs Defendant to his answer to interrogatory no. 4.

7. Identify all Internet browsers that you used between January 1, 2024 to the present, including but not limited to, Chrome, Safari, Firefox, Edge, and/or Internet Explorer.

ANSWER: Chrome and Edge.

8. Identify all Internet search engines that you used between January 1, 2024 to the present, including but not limited to google, bing, yahoo, AOL, and/or DuckDuckGo.

ANSWER: Google, Chrome, Bing, Yahoo.

9. Identify all features that you used between January 1, 2024 to the present, to

mask your Internet browsing history, including but not limited to functionalities such as “incognito mode,” “private search,” “private browsing,” and/or browsers that do not keep browsing history records.

ANSWER: None.

10. Identify all services that you used between January 1, 2024 to the present, to mask the location of your devices used to access the Internet, including but not limited to any Virtual Private Network (VPN) service, IP address masking technology, and/or IP blocking technology.

ANSWER: None.

11. Identify all individuals who had access to your electronic devices, in August 2024, that are capable of Internet access.

ANSWER: None.

12. If any of your responses to a request for admission served concurrently with these Interrogatories is not an unqualified admission, identify and describe all facts supporting that response.

ANSWER: Plaintiff Van Elzen was not looking to get a warranty in 2024, and he never provided his contact information to AHS.

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I, David Van Elzen, declare under penalty of perjury of the laws of the United States that, to the best of my knowledge and belief, the foregoing answers are true and correct.

Dated: 01 / 20 / 2025

*David A Van Elzen*

\_\_\_\_\_  
David Van Elzen, Plaintiff

DATED this 21st day of January, 2025.

/s/ Avi R. Kaufman

Avi R. Kaufman

kaufman@kaufmanpa.com

KAUFMAN P.A.

237 South Dixie Highway, Floor 4

Coral Gables, FL 33133

Telephone: (305) 469-5881

*Counsel for Plaintiff and the putative Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 21, 2025, I served the foregoing by email on all counsel of record.

/s/ Avi R. Kaufman

Avi R. Kaufman

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**AMERICAN HOME SHIELD  
CORPORATION**, a Delaware registered  
corporation,

*Defendant.*

Case No. 1:24-cv-01206-WCG

**CLASS ACTION**

**PLAINTIFF'S RESPONSES TO REQUESTS FOR ADMISSION**

Plaintiff David Van Elzen provides the following responses to Defendant American Home Shield Corporation's Requests for Admission:

**RESPONSES TO REQUESTS FOR ADMISSION**

1. Admit that you have made online searches regarding home warranties between January 1, 2024 to the present.

ANSWER: Deny

2. Admit that you have made online searches regarding home repairs between January 1, 2024 to the present.

ANSWER: Deny

3. Admit that you have made online searches for "AHS" between January 1, 2024 to the present.

ANSWER: Deny

4. Admit that you have made online searches for "home warranty" between January 1, 2024 to the present.

ANSWER: Deny

5. Admit that you have made online searches for "American Home Shield"

between January 1, 2024 to the present.

ANSWER: Deny

6. Admit that you visited the website, “www.ahs.com,” between January 1, 2024 and the present.

ANSWER: Deny

7. Admit that you visited the website, “https://www.ahsquotes.com,” between January 1, 2024 to the present.

ANSWER: Deny

8. Admit that you visited the website, “https://ahsquotes.com/10/,” between January 1, 2024 to the present.

ANSWER: Deny

9. Admit that you visited the website, “https://top10homewarrantyranking.com/,” between January 1, 2024 to the present.

ANSWER: Deny

10. Admit that you clicked “Get A Free Quote” after entering your address, email address, and/or phone number on AHS’s website at the following URL: https://www.ahsquotes.com.

ANSWER: Deny

DATED this 21st day of January, 2025.

/s/ Avi R. Kaufman

Avi R. Kaufman

kaufman@kaufmanpa.com

KAUFMAN P.A.

237 South Dixie Highway, Floor 4

Coral Gables, FL 33133

Telephone: (305) 469-5881

*Counsel for Plaintiff and the putative Class*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 21, 2025, I served the foregoing by email on all counsel of record.

*/s/ Avi R. Kaufman*  
\_\_\_\_\_  
Avi R. Kaufman

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

**DAVID VAN ELZEN**, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

**AMERICAN HOME SHIELD  
CORPORATION**, a Delaware registered  
corporation,

*Defendant.*

Case No. 1:24-cv-01206-WCG

**CLASS ACTION**

**PLAINTIFF'S RESPONSES TO FIRST REQUESTS FOR PRODUCTION**

Plaintiff David Van Elzen responds to Defendant American Home Shield Corporation's first requests for production as follows. Plaintiff objects to all of Defendant's requests to the extent they seek attorney client privileged and/or work product information, and, therefore, construes Defendant's requests to not seek such information. Plaintiff further states:

**RESPONSES TO REQUESTS FOR PRODUCTION**

1. Produce all documents and communications supporting or otherwise relating to your allegations that Defendant lacked consent to contact you.

Response: Plaintiff will produce responsive documents in his possession.

2. Produce all of your communications with AHS of any type, including written or audio communications, relating to any matter, including the text messages at issue in this case.

Response: Plaintiff will produce responsive documents in his possession.

3. Produce all non-privileged communications between you and your counsel relating to your allegations that Defendant lacked consent to contact you, before you filed the complaint in this action.

Response: None.

4. Produce all recordings of your communications with AHS, including the text messages at issue in this case.

Response: Plaintiff will produce responsive documents in his possession.

5. Produce all documents relating to your Internet browsing history on any device from June 1, 2024 to September 30, 2024, regarding AHS and/or home warranties. This request includes but is not limited to website visits, and records regarding the use of a search engine (such as, but not limited to, google, bing, yahoo, AOL, and/or DuckDuckGo) to inquire about search terms such as “home warranty,” “home warranties,” “American Home Shield,” “AHS,” “appliance coverage,” “compare home warranty,” “quote(s),” “Shield Gold,” “Shield Platinum,” “coverage,” “FrontDoor,” “refrigerator repair,” “heater repair” and/or “air conditioner repair.”

Response: None.

6. Produce all documents relating to your Internet browsing history on any device from January 1, 2024, to the present, regarding the Telephone Consumer Protection Act and/or TCPA. This request includes but is not limited to website visits, and records regarding the use of a search engine (such as, but not limited to, google, bing, yahoo, AOL, and/or DuckDuckGo) to inquire about “TCPA” or the “Telephone Consumer Protection Act.”

Response: None.

7. Produce for physical inspection the electronic devices identified in response to Interrogatory No. 3, which inspection shall include a search for the Internet activity between June 1, 2024 to September 30, 2024 related to websites concerning AHS and/or home warranties, and search engine usage regarding terms related to AHS and/or home warranties.

Response: Plaintiff objects to this request as vague as Plaintiff is unsure what aspect of Plaintiff’s device Defendant seeks to inspect and what information Defendant seeks by doing so. Plaintiff objects to this request as overbroad, unduly burdensome, harassing, invasive of

Plaintiff's personal privacy, and not proportional to the needs of discovery to the extent Defendant seeks a wholesale inspection of Plaintiff's device not reasonably tailored to obtaining whatever information Defendant seeks and which Plaintiff has already responded does not exist. Plaintiff further objects to this request as any information regarding the data sought is available through a less intrusive means of discovery exists. Plaintiff also objects to the extent Defendant has failed to propose any reasonable parameters or safeguards for the inspection. Finally, Plaintiff objects to the extent the inspection could result in the discovery of attorney client privileged, work product, confidential, financial, personal health or other information as to which Defendant is not entitled. Plaintiff will produce his internet history for his computer and phone for the date of the purported opt in.

DATED this 21st day of January, 2025.

/s/ Avi R. Kaufman  
Avi R. Kaufman  
kaufman@kaufmanpa.com  
KAUFMAN P.A.  
237 South Dixie Highway, Floor 4  
Coral Gables, FL 33133  
Telephone: (305) 469-5881

*Counsel for Plaintiff and the putative Class*

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on January 21, 2025, I served the foregoing by email on all counsel of record.

/s/ Avi R. Kaufman  
Avi R. Kaufman

# EXHIBIT O

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
CIVIL ACTION NO.: 1:4-CV-01206-WCG

\*\*\*\*\*

David Van Elzen, \*

Plaintiff \*

vs. \*

AMERICAN HOME SHIELD \*

CORPORATION, \*

Defendant \*

\*\*\*\*\*

DEPOSITION OF: MICHAEL PERRY

TAKEN REMOTELY FROM:

JERSEY CITY, NEW JERSEY

August 21, 2025 11:05 a.m.

Brenda M. Ginisi

Court Reporter

1 REMOTE APPEARANCES:

2 Representing the Plaintiff:

3 KAUFMAN P.A.

4 237 South Dixie Highway, Floor 4

5 Coral Gables, Florida 33133

6 BY: AVI R. KAUFMAN, ESQ.

7 (305) 469-5881

8 E-mail: kaufman@kaufmanpa.com

9 Representing the Defendant:

10 GIBSON DUNN

11 333 South Grand Avenue

12 Los Angeles, California 90071

13 BY: TIMOTHY W. LOOSE, ESQ.

14 (213) 229-7000

15 E-mail: tloose@gibsondunn.com

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WITNESS: MICHAEL PERRY

EXAMINATION BY: PAGE:  
Mr. Kaufman 5  
Mr. Loose 35

FURTHER EXAMINATION BY: PAGE:  
Mr. Kaufman 37/47/50  
Mr. Loose 35/46/49

EXHIBITS: PAGE:

(none offered)

1           A.       I don't recall all of them off the  
2 top of my head. There's quite a bit of browsing  
3 history on the device.

4           Q.       Is there any gaps between  
5 August 17, 2024 and August 27, 2024?

6           A.       I don't remember off the top of my  
7 head, if there were.

8           MR. KAUFMAN: Okay. I don't have  
9 any additional questions.

10          MR. LOOSE: A few recross, I guess.

11

12

13          FURTHER EXAMINATION BY MR. LOOSE:

14

15          Q.       I want to talk about the  
16 selectively-deleted entries for a minute,  
17 Mr. Perry.

18                    If certain visits had selectively  
19 been deleted, would your analysis have uncovered  
20 that?

21          A.       Probably not.

22          Q.       So if a visit to wwahs.com had been  
23 selectively deleted, would you have uncovered  
24 that?

1 A. Probably not.

2 Q. Same question for ahsquotes.com,  
3 same answer?

4 A. Same answer.

5 Q. And same question for top10.com,  
6 same answer?

7 A. Same answer.

8 Q. So regardless of what site was  
9 selectively deleted, if any site were selectively  
10 deleted you would not have necessarily uncovered  
11 that in this particular analysis; is that right?  
12 Sorry. Your mic. went out there.

13 A. That is correct.

14 MR. LOOSE: Nothing more from me.

15

16

17 FURTHER EXAMINATION BY MR. KAUFMAN:

18

19 Q. As part of your analysis, you also  
20 did a deletion history report, right?

21 A. That's correct.

22 Q. Would any browser history, the  
23 selective browser history deletion be reflected in  
24 your deletion history report?

1 A. It would not.

2 Q. Why not?

3 A. That's not something that I would be  
4 able to determine by a forensic analysis in this  
5 case.

6 Q. Is there some kind of forensic  
7 analysis you could have conducted to determine  
8 that?

9 A. If selective browsing history was  
10 deleted, the evidence would likely not exist to be  
11 able to be found by any forensic analysis.

12 Q. So you're saying a person can  
13 selectively delete history and there's nothing you  
14 can do to figure that out?

15 A. Essentially, yeah.

16 MR. KAUFMAN: Okay. I don't have  
17 anymore questions. Shocking.

18 MR. LOOSE: Just a couple more  
19 follow-up. Are you okay going with out a  
20 break, Mr. Perry; I know we've been on for  
21 over an hour?

22 THE WITNESS: (nonverbal response)

23

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C E R T I F I C A T E  
COMMONWEALTH OF MASSACHUSETTS

I, BRENDA M. GINISI, a court reporter and Notary Public, do hereby certify:

MICHAEL PERRY, the witness whose testimony is hereinbefore set forth, was duly sworn by me, pursuant to Mass. R. Civ. P. 27, 29, 30, 30A and 31, and that such testimony is a true and accurate record of my stenotype notes taken in the foregoing matter, to the best of my knowledge, skill and ability.

I further certify that I am not related to any parties to this action by blood or marriage; and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 5th day of September, 2025.

Brenda M. Ginisi	My Commission expires:
Notary Public	June 2, 2028

1 Date: September 8, 2025  
2 To: Timothy W. Loose, Esq.  
3 Copied to: Avi R. Kaufman, Esq.  
4 From: Brenda M. Ginisi  
5 Deposition of: Michael Perry  
6 Taken: August 20, 2025  
7 Action: David van Elzen v. American Home Shield  
8 Corporation

9 =====

10 Enclosed is a copy of the deposition of  
11 Michael Perry. Pursuant to the rules of civil  
12 procedure, Mr. Perry has thirty days to sign the  
13 deposition from today's date.

14 Please have Mr. Perry sign the enclosed  
15 signature page. If there are any errors, please  
16 have him mark the page, line and error on the  
17 enclosed correction sheet. He should not mark the  
18 transcript itself. This addendum should be  
19 forwarded to all interested parties.

20 Thank you for your cooperation in this  
21 matter.

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UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN  
CIVIL ACTION NO.: 1:4-CV-01206-WCG

\*\*\*\*\*

David Van Elzen, \*

Plaintiff \*

vs. \*

AMERICAN HOME SHIELD \*

CORPORATION, \*

Defendant \*

\*\*\*\*\*

I, Michael Perry, do hereby certify, under  
the pains and penalties of perjury, that the  
foregoing testimony is true and accurate, to the  
best of my knowledge and belief.

WITNESS MY HAND, this            day of            ,  
2025.

-----  
MICHAEL PERRY

bmg

# EXHIBIT P

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF WISCONSIN

DAVID VAN ELZEN,  
PLAINTIFF,

V. CASE NO.: 24-1206

AMERICAN HOME SHIELD CORPORATION,  
DEFENDANT.

DEPONENT: DAVID VAN ELZEN

TAKEN: SEPTEMBER 25, 2025

REPORTER: DANNIELLE COPELAND  
REGISTERED DIPLOMATE REPORTER  
CERTIFIED REALTIME REPORTER  
CALIFORNIA CSR 14444

STENOGRAPHICALLY REPORTED REMOTELY VIA ZOOM  
VIDEOCONFERENCE

JOB NUMBER 119111

**First Legal Depositions - Calendar@firstlegal.com**  
**855.348.4997**

1 THE VIDEOTAPED DEPOSITION OF DAVID VAN ELZEN,  
2 TAKEN PURSUANT TO NOTICE HERETOFORE FILED, VIA ZOOM  
3 VIDEOCONFERENCE, ON SEPTEMBER 25, 2025, AT  
4 APPROXIMATELY 10:01 A.M., CENTRAL TIME, UPON ORAL  
5 EXAMINATION, AND TO BE USED IN ACCORDANCE WITH THE  
6 CALIFORNIA CODE OF CIVIL PROCEDURE.

7

8 \*\*\* \*\*

9 APPEARANCES

10 VIA ZOOM VIDEOCONFERENCE

11

12

13 FOR THE PLAINTIFFS:  
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18 FOR THE DEFENDANT:  
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23 TKOLESK@GIBSONDUNN.COM

22

23 ALSO PRESENT:  
24 MARCUS CAMPBELL, VIDEOGRAPHER

24

25

1 interrogatories and requests for production of  
2 documents to David Van Elzen.

3 Do you recall reviewing these requests that asked  
4 for documents?

5 THE WITNESS: Could you scroll down a  
6 little bit more?

7 Oh, yes. I saw that, yes.

8 ATTORNEY KOLESK: And, Marcus, can you  
9 continue to scroll down until we get to the requests  
10 for production, which should follow the  
11 interrogatories?

12 Okay. And then so if you go to Request  
13 Number 5, Marcus, if you don't mind.

14 Okay. You can pause there.

15 BY ATTORNEY KOLESK:

16 Q. And so Request Number 5 asks you to produce  
17 all documents relating to your internet browsing  
18 history on any device from June 1st to September 30th.

19 A. Uh-huh.

20 Q. Did you understand that you were being  
21 asked to produce all documents related to your internet  
22 browsing history for that time period and --

23 A. Yes, I did.

24 Q. Did you take steps to identify and collect  
25 documents responsive to this request?

1           A.    I actually had to go to my internet  
2 provider -- or my internet technician who I bought my  
3 computer from and I go to if I have issues because I  
4 wasn't able to do it on my own, and he produced the  
5 report which we forwarded over to my attorneys.

6           So he knew what my attorney was asking for. I  
7 told my IT guy that. He produced the report. The  
8 report was forwarded over to -- either Daniel Winter or  
9 to Avi.

10          Q.    Okay. And Request Number 6 asks for more  
11 documents relating to your internet browsing history  
12 regarding the Telephone -- Telephone Consumer Protect  
13 Act.

14          Did you review this as well?

15          A.    Okay. What is your question?

16          Q.    Did you review this request?

17          A.    I did.

18          Q.    Did you search for and produce documents  
19 relating to your internet browsing history about the  
20 TCPA in response to this request?

21                ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
22 to form.

23                THE WITNESS: That would have had to have  
24 been included in the browsing history that we  
25 submitted. But I know I did not search for the TCPA,

1 any information about it. I was familiar with it.

2 BY ATTORNEY KOLESK:

3 Q. And Request Number 7. And it says, produce  
4 for physical inspection electronic devices  
5 identifying -- in response to another question.

6 Do you recall this request for an inspection of  
7 your personal devices?

8 A. I do.

9 Q. Did you take any steps to prepare your  
10 devices for inspection or to preserve relevant internet  
11 activity?

12 A. I did not.

13 Q. Did you -- before any inspection or  
14 collection, were any browser settings enabled that  
15 automatically delete history?

16 A. No.

17 Q. Do you use private or incognito mode in any  
18 browser on your phone or laptop?

19 A. No.

20 Q. Do you use any third-party cleanup or  
21 privacy utilities on your phone or laptop?

22 A. No.

23 Q. Did you have any questions or concerns  
24 about these requests when you reviewed them?

25 A. No.

1 ATTORNEY KOLESK: And, Marcus, you can pull  
2 up Tab 25, which I'll mark as Exhibit 17.

3 (EXHIBIT 17 WAS MARKED FOR IDENTIFICATION.)

4 THE VIDEOGRAPHER: One moment, please.

5 ATTORNEY KOLESK: Sure.

6 So yeah, so this is an -- an Excel  
7 spreadsheet and it's a document marked as Confidential  
8 Van Elze 05.

9 BY ATTORNEY KOLESK:

10 Q. Do you happen to recognize this document?

11 ATTORNEY KOLESK: And, Marcus, you can  
12 scroll, you know, up to the top of the -- the -- the  
13 spreadsheet.

14 BY ATTORNEY KOLESK:

15 Q. And this spreadsheet contains one column  
16 for a date and time, and the next column is navigated  
17 to URL.

18 Do you recall this document, Mr. Van Elzen?

19 A. I don't know if that's the one my IT guy  
20 produced or if this came from the inspection. I don't  
21 recall which one it is.

22 Q. Okay.

23 A. But it looks familiar.

24 Q. Okay. I'll represent to you that this was  
25 the document produced on your behalf, and now -- so you

1 did not personally prepare this document?

2 A. No.

3 Q. Do you know which device this browser  
4 history pertains to?

5 A. Well, it came off of my laptop.

6 Q. Okay. And do you recall when you extracted  
7 or pulled this browser history?

8 A. I don't recall the date, no.

9 Q. Can you walk me through the steps you took  
10 to extract this data?

11 A. My IT guy did all of that.

12 Q. And what instructions did you provide to  
13 your IT guy?

14 A. I simply told him what period my attorney  
15 was requesting from my browser search history.

16 Q. And what period did you tell him?

17 A. Whatever was requested. I don't recall  
18 offhand. I believe it was for the -- maybe all of  
19 August of '24 or for specific weeks within there, just  
20 what you -- I think what your office may have been  
21 requesting, or American Home Shield. I don't recall.  
22 Just the period covering the text messages, maybe a --  
23 maybe a week prior to that and prior -- a week after,  
24 perhaps.

25 Q. Without disclosing the substance of any

1 communications with counsel, how did you provide this  
2 browser history for production?

3 A. My --

4 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
5 to form.

6 THE WITNESS: My IT guy put it in a -- a  
7 file, he sent it to my email address. I forwarded  
8 that, then, I believe to Dan Winter.

9 BY ATTORNEY KOLESK:

10 Q. At the time you filed the -- your lawsuit,  
11 did you take any steps to preserve your browser  
12 history?

13 A. No.

14 Q. Did you review the spreadsheet for accuracy  
15 before it was produced?

16 A. No. It was too extensive. No. I assume  
17 my IT guy knows what he's doing.

18 Q. But you didn't personally go through to see  
19 what the URL sites were listed in there?

20 A. No, I did not.

21 Q. And so if you take a look at the first  
22 entry in this spreadsheet, you know, and you can tell  
23 how it's -- how it's produced. It's sorted by time and  
24 the date stamp starts -- it's 1306 UTC, but that is  
25 8:06 a.m. Central time on August 24th, 2024, and it's

1 referring to a visit to a website called

2 "weareeverise"?

3 A. Everise. Everise. I'm familiar with it.

4 Q. Everise.

5 A. Yeah.

6 Q. According to your complaint, you received  
7 the first text message from AHS at 7:00 a.m. central  
8 that day, right?

9 A. I assume that's correct.

10 Q. And can you explain why there's no browser  
11 history in this initial production for the period  
12 before 8:06 Central time on August 24th, 2024?

13 A. I cannot.

14 Q. Did you use your phone, computer, or any  
15 other device to access the internet before 8:06 a.m.  
16 that day?

17 A. I don't recall. That's a year ago.

18 Q. Okay. Do you know if your IT person  
19 attempted to collect or produce browser history for the  
20 hours before 8:06 a.m.?

21 A. I have no idea.

22 Q. So would you agree that based on this  
23 initial spreadsheet that we're looking at, there's no  
24 record of your internet activity for the hours  
25 immediately before you received the first text message

1 from AHS?

2 ATTORNEY FERNANDEZ DEL CASTILLO: Objection

3 to form.

4 THE WITNESS: Perhaps on what we submitted,

5 but I'm sure the inspection that was done at your

6 request should have shown that.

7 BY ATTORNEY KOLESK:

8 Q. Have you used the same laptop since January

9 of last year?

10 A. Yes.

11 Q. And to make that clear, January of 2024,

12 you've used the same laptop since then?

13 A. Same laptop, yes.

14 Q. And have you used the same physical cell

15 phone since January 2024?

16 A. Yes.

17 ATTORNEY KOLESK: And, Marcus, can you pull

18 up Tab 26, which I'll mark as Exhibit 18.

19 (EXHIBIT 18 WAS MARKED FOR IDENTIFICATION.)

20 BY ATTORNEY KOLESK:

21 Q. And I'm showing you a document marked as

22 the Protocol For Examination of Electronic Devices of

23 David Van Elzen and Associated Forensic Images.

24 Have you seen this document before?

25 A. I don't recall seeing it. I may have, but

1 it doesn't come to my memory.

2 Q. Okay. For shorthand I'm going to refer to  
3 this as the inspection protocol.

4 Is that okay with you?

5 A. That's fine.

6 Q. And did you discuss the inspection protocol  
7 with your attorneys at any time?

8 A. Other than setting it up, where it would be  
9 done, nothing beyond that.

10 Q. Did you have any input into the process  
11 described in the inspection protocol, such as  
12 identifying which devices would be produced?

13 A. Just what I --

14 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
15 to the extent that it calls for privileged  
16 communications.

17 To the extent that -- that you can answer  
18 without disclosing the stuff that you discussed with  
19 the attorneys, go ahead and answer.

20 THE WITNESS: No, just what items to bring  
21 and what location.

22 BY ATTORNEY KOLESK:

23 Q. Do you understand that inspection protocol  
24 applies to all electronic devices you identified in  
25 discovery for the period of August 17th through August

1 27th, 2024?

2 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
3 to form.

4 THE WITNESS: Yes.

5 BY ATTORNEY KOLESK:

6 Q. Are you aware that the inspection protocol  
7 provides for a third-party forensic investigator to  
8 create forensic images of your devices and analyze your  
9 internet browsing history and website visits during  
10 that period?

11 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
12 to form.

13 Timothy, it's your deposition, you can ask  
14 the questions however you like, but you're using a lot  
15 of jargon and you're speaking very quickly.

16 ATTORNEY KOLESK: Okay. I apologize.

17 BY ATTORNEY KOLESK:

18 Q. Mr. Van Elzen, if at any point you're  
19 confused by any of the words I'm using, feel free to  
20 stop me and ask me to clarify, but I will also attempt  
21 to make sure that my questions are clear.

22 A. Okay.

23 Q. Did you participate in identifying or  
24 gathering devices that were provided to the  
25 investigator who was conducting the inspection

1 protocol?

2 A. Okay. What do you mean by "participate"?

3 Q. Did you tell -- did you personally gather  
4 the devices that were used to be inspected during this  
5 inspection protocol?

6 A. Yes. I dropped them off.

7 Q. Okay. Before you dropped them off, did you  
8 run any system or browser maintenance, cleaning, or  
9 privacy tools on your devices?

10 A. No.

11 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
12 to form.

13 THE WITNESS: No.

14 BY ATTORNEY KOLESK:

15 Q. Did you review any reports prepared by  
16 this -- I'll call them the third-party investigator.  
17 They're the person who is conducting this inspection  
18 protocol.

19 Did you review any of this individual's -- this  
20 company's reports?

21 A. No.

22 Q. Did you request that any of those reports  
23 or information in there be withheld or redacted on the  
24 basis of privilege or relevance?

25 A. No.

1 Q. Do you know whether you have produced a  
2 complete record of your browser history for the week  
3 leading up to your first text message from AHS?

4 A. I would assume it is everything. I didn't  
5 delete anything, so whatever was in there -- whatever  
6 was expected is what was in there.

7 Q. Okay.

8 ATTORNEY KOLESK: Marcus, I'm going to ask  
9 you to pull up a couple of spreadsheets. Basically,  
10 it's going to be -- it's several spreadsheets. It's  
11 Tab 28, Tab 29, Tab 30, Tab 32, Tab 33, Tab 34, Tab 35,  
12 and Tab 36.

13 You can start with Tab 28.

14 THE VIDEOGRAPHER: Okay.

15 ATTORNEY KOLESK: And I'll mark that as  
16 Exhibit 19.

17 (EXHIBIT 19 WAS MARKED FOR IDENTIFICATION.)

18 THE VIDEOGRAPHER: Okay. I have Tab 28 up.

19 Can you hear it okay -- or can you see it  
20 okay?

21 ATTORNEY KOLESK: Mr. Van Elzen, can you  
22 see this Excel spreadsheet?

23 THE WITNESS: You could enlarge it a  
24 little. I can see it.

25 THE VIDEOGRAPHER: Okay. Let me -- yeah,

1 sorry, Counsel, I'm actually using a trial of the Excel  
2 sheet.

3 ATTORNEY KOLESK: Okay.

4 THE VIDEOGRAPHER: So it's not letting me  
5 adjust it too much.

6 ATTORNEY KOLESK: Okay.

7 And I apologize, Mr. Van Elzen, if you  
8 can't see it that great, but at the very top, can you  
9 see how it says browser history 8 -- I'm looking at the  
10 title of the document. It says 8/22 -- even, Marcus,  
11 in the top of the file itself it says Tab 28 browser  
12 history 8/22.

13 See where the cursor is?

14 THE WITNESS: Yes.

15 ATTORNEY KOLESK: 8/22 through 8/24?

16 THE WITNESS: Uh-huh.

17 BY ATTORNEY KOLESK:

18 Q. These -- this spreadsheet and a couple  
19 others week look at, too, were produced in this case  
20 pursuant to the inspection protocol we just discussed.

21 Do you recognize this document?

22 A. I don't know if that's the one that we  
23 submitted or from your inspection. I don't recall. I  
24 don't know. But it probably is accurate. That's all I  
25 can tell you.

1 Q. Okay. So this spreadsheet was found  
2 pursuant to the protocol. So you don't recall  
3 personally creating or causing to be created this  
4 document labeled browser history 8/22/24 through  
5 8/24/24?

6 A. No. I --

7 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
8 to form.

9 THE WITNESS: Yeah, I would not have done  
10 that. No.

11 BY ATTORNEY KOLESK:

12 Q. Okay. And who would have done that?

13 A. Either my IT guy or your -- whoever did the  
14 inspection that you requested.

15 Q. And if it was your IT guy, what led your IT  
16 guy to create this spreadsheet?

17 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
18 to form.

19 THE WITNESS: Again, I simply gave him the  
20 dates that were required for the browsing history. I  
21 trusted him that he would be able to do that accurately  
22 and professionally. I didn't review it when it was  
23 done. I simply forwarded it.

24 BY ATTORNEY KOLESK:

25 Q. And did anyone suggest or instruct you to

1 create this spreadsheet?

2 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
3 to form.

4 THE WITNESS: I was simply told what was  
5 needed, brought it to my IT guy, gave him the  
6 instructions. He completed it, and then we forwarded  
7 it.

8 ATTORNEY KOLESK: Okay. And I'll just pull  
9 up a couple. We don't have to talk about them much,  
10 but I just want to -- to show you each of them because  
11 there's several that were found on your device pursuant  
12 to the inspection protocol.

13 The next is Tab 29, and we'll enter it as  
14 Exhibit 20.

15 (EXHIBIT 20 WAS MARKED FOR IDENTIFICATION.)

16 ATTORNEY KOLESK: And again, can you --  
17 Marcus, can you just scroll to the top?

18 BY ATTORNEY KOLESK:

19 Q. And, Mr. Van Elzen, can you see where the  
20 mouse cursor is?

21 This is entitled browser history 8/22/24 through  
22 8/24/24, and then there's a series of numbers after  
23 that starting with a dollar sign.

24 A. I can vaguely make it out. It's not very  
25 clear, but I can see most of it, yes.

1 Q. Okay. And -- and the same question on this  
2 one.

3 Do you recall personally creating this document?

4 A. I did not personally create it, no.

5 Q. And it was -- if anyone created it, it  
6 would likely have been your IT vendor?

7 A. That is correct.

8 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
9 to form.

10 THE WITNESS: That is correct.

11 ATTORNEY KOLESK: Okay.

12 Marcus, can you pull up Tab 30, and it's  
13 Exhibit 21 -- we'll mark it as Exhibit 21.

14 (EXHIBIT 21 WAS MARKED FOR IDENTIFICATION.)

15 BY ATTORNEY KOLESK:

16 Q. And, Mr. Van Elzen, again, I'm going to  
17 test your eyesight here at the top. It's browser  
18 history 8/22/24 through 8/24/24. There's an another  
19 series of numbers and letters followed by a dollar  
20 sign.

21 A. I see that.

22 Q. Did you -- do you recall creating this  
23 document?

24 A. I did not create it.

25 Q. And if anyone created this document, would

1 it have been your IT vendor?

2 A. That is correct.

3 Q. Okay.

4 ATTORNEY KOLESK: Marcus, if you can pull  
5 up Tab 32, and we'll mark that as Tab -- as Exhibit 22.

6 (EXHIBIT 22 WAS MARKED FOR IDENTIFICATION.)

7 BY ATTORNEY KOLESK:

8 Q. And this is another document, it's entitled  
9 browser history 9/15/24, has dollar sign R7 -- or RZ  
10 followed by a number of -- of other letters.

11 Do you recall this document?

12 A. I didn't create it.

13 Q. And if anyone created it, it would have  
14 been your IT vendor?

15 A. Yes.

16 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
17 to form.

18 THE WITNESS: Yes.

19 ATTORNEY FERNANDEZ DEL CASTILLO:

20 Mr. Van Elzen, please slow down.

21 THE WITNESS: Yes, I will. I will,

22 Fernan- -- Francisco. Thank you.

23 I would like to take a break shortly.

24 ATTORNEY KOLESK: Yeah. That's fine. I

25 have -- there -- there's about like five other of these

1 that I can show you, or if -- if you would just --  
2 if -- there's about -- one, two, three -- four other  
3 spreadsheets like this that I would like to quickly  
4 just introduce as exhibits and see if you did this.

5 Maybe, yeah, we can just do that, and then  
6 the same questions, if you reviewed them and -- or I  
7 mean if you created them, if not, your IT vendor  
8 created them, and then we can just take a break after  
9 that.

10 Does that sound okay?

11 THE WITNESS: I'm okay with that, yes.

12 ATTORNEY KOLESK: Okay. So Tab 33 we'll  
13 just mark as Exhibit 23.

14 (EXHIBIT 23 WAS MARKED FOR IDENTIFICATION.)

15 BY ATTORNEY KOLESK:

16 Q. Same questions. You can see at the top, it  
17 says browser history. This one says 9\_16\_24. We're  
18 going to mark this as Exhibit 23.

19 Do you recall creating this document?

20 A. I did not create it.

21 Q. And if anyone created it, it would have  
22 been your IT vendor?

23 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
24 to form.

25 THE WITNESS: Correct.

1 ATTORNEY KOLESK: Okay. Marcus, thank you  
2 so much. Tab 24, we'll mark it as Exhibit 24.

3 THE VIDEOGRAPHER: This tab is giving me an  
4 error, Counsel. It's not letting me browse -- or I'm  
5 sorry. It's not letting me download from the browser.

6 ATTORNEY KOLESK: Okay. That's fine.  
7 let's just go to Tab 35, which we'll mark  
8 as Exhibit 24.

9 THE VIDEOGRAPHER: Okay. Let me just write  
10 that down.

11 And 34 was Exhibit 23, correct?

12 ATTORNEY KOLESK: I thought 33 was 23, Tab  
13 33 was 33 [sic].

14 THE VIDEOGRAPHER: Oh, okay. So we're  
15 going to skip over --

16 ATTORNEY KOLESK: Yeah, we'll -- we'll skip  
17 Tab 34.

18 THE VIDEOGRAPHER: Gotcha.

19 ATTORNEY KOLESK: If you can't -- if it's  
20 unable to be opened, we'll just -- we won't use it.

21 THE VIDEOGRAPHER: Skip it over. Okay.

22 ATTORNEY KOLESK: And so Tab 35 should be  
23 Exhibit 24.

24 (EXHIBIT 24 WAS MARKED FOR IDENTIFICATION.)

25 THE VIDEOGRAPHER: Okay. Sounds good.

1 Stand by, please. Tab 35.

2 BY ATTORNEY KOLESK:

3 Q. And, Mr. Van Elzen, this tab you can see,  
4 again, says Edge browser history and again has a dollar  
5 sign and a number of characters after it.

6 Do you see this document?

7 A. I do see it, yes.

8 Q. And again, like the others, it has the date  
9 and the time, navigated page title.

10 And if anyone created this document, it would have  
11 been your IT vendor?

12 ATTORNEY FERNANDEZ DEL CASTILLO: Form and  
13 foundation.

14 THE WITNESS: That would be correct, yes.

15 ATTORNEY KOLESK: Okay.

16 And finally, Tab 36, Marcus, thank you,  
17 we'll mark -- we'll mark Tab 36 as Exhibit 25.

18 (EXHIBIT 25 WAS MARKED FOR IDENTIFICATION.)

19 BY ATTORNEY KOLESK:

20 Q. Tab 36, again, if you look at the top of it  
21 it says Edge browser history, underscore. Again, it  
22 has a dollar symbol and a number of characters. And  
23 I'll represent this was produced pursuant to the  
24 inspection protocol we just discussed.

25 Do you recall producing -- create -- producing or

1 creating this document yourself?

2 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

3 THE WITNESS: No.

4 BY ATTORNEY KOLESK:

5 Q. And if anyone created it, it would have  
6 been your IT vendor?

7 ATTORNEY FERNANDEZ DEL CASTILLO: Form and  
8 foundation.

9 THE WITNESS: Correct.

10 ATTORNEY KOLESK: Okay. Let's -- we can  
11 take a break there.

12 We can go off the record.

13 THE VIDEOGRAPHER: Off the record at  
14 12:09 a -- I'm sorry, 12:09 p.m.

15 (RECESS TAKEN.)

16 THE VIDEOGRAPHER: Back on the record at  
17 12:20 p.m.

18 ATTORNEY KOLESK: Okay. Marcus, I'm going  
19 to ask you to pull up Tab 36A, and I'll mark this as  
20 Exhibit 26.

21 (EXHIBIT 26 WAS MARKED FOR IDENTIFICATION.)

22 BY ATTORNEY KOLESK:

23 Q. And, Mr. Van Elzen, this was a document  
24 that was produced by that third-party investigator I  
25 was talking about pursuant to the inspection protocol

1 we've discussed.

2 Have you reviewed -- seen this document before?

3 A. I've seen it.

4 Q. Okay. Do you see at the top where it says,  
5 files sent to the recycle been after August 17th, 2024?

6 A. Yes.

7 Q. And do you see there's a couple of columns,  
8 the second column says name, and there are a number of  
9 named files that correspond to the Excel spreadsheets  
10 we just discussed before the break that read like Edge  
11 browser history, browser history, 9\_15, et cetera?

12 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
13 to form.

14 THE WITNESS: I do see them.

15 BY ATTORNEY KOLESK:

16 Q. Okay. And do you agree that they -- those  
17 file names match the ones that we just talked about on  
18 the spreadsheets?

19 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
20 to form.

21 THE WITNESS: I would agree.

22 ATTORNEY KOLESK: Okay.

23 And, Marcus, if you can scroll to the far  
24 right, there is a series of columns that say created  
25 and modified beginning on 9/15/2024.

1 BY ATTORNEY KOLESK:

2 Q. Do you see those dates, Mr. Van Elzen?

3 A. I do see them.

4 Q. And do you recall moving those spreadsheets  
5 to the recycle bin of your laptop on or around those  
6 dates?

7 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
8 to form.

9 THE WITNESS: Not that I recall.

10 BY ATTORNEY KOLESK:

11 Q. And you don't know why they were moved to  
12 your recycle bin?

13 A. No, I don't. I don't recall. No, I don't.

14 Q. Okay.

15 ATTORNEY KOLESK: On Tab 37 -- oh, sorry.  
16 We can pull up Tab 37 and mark that as a  
17 new exhibit, as Exhibit 37.

18 (EXHIBIT 27 WAS MARKED FOR IDENTIFICATION.)

19 THE VIDEOGRAPHER: That would be Exhibit  
20 27, right, Counsel?

21 ATTORNEY KOLESK: Yes. I apologize. Yes.

22 THE VIDEOGRAPHER: No problem. No problem.

23 BY ATTORNEY KOLESK:

24 Q. Mr. Van Elzen, do you recognize this  
25 document?

1 A. Yes.

2 Q. And just for the record, it's a document  
3 that appears to be from a vendor named IT Evolution.  
4 It's dated September 16th, 2024. This was also  
5 included in your production pursuant to the protocol we  
6 just discussed and found in your recycle bin.

7 Can you confirm that this is your receipt from  
8 IT Evolution dated September 16th, 2024?

9 A. Yes.

10 Q. And as we've established, your complaint  
11 was filed on September 22nd, 2024; is that correct?

12 A. I believe that's correct.

13 Q. What was the purpose of your visit to  
14 IT Evolution on September 16th, 2024?

15 A. To produce my browsing history for the  
16 period in question.

17 Q. And did you bring your laptop to  
18 IT Evolution?

19 A. Yes.

20 Q. Did you bring your phone?

21 A. No.

22 Q. Was this same laptop the same one that was  
23 subject to the inspection protocol that you dropped off  
24 that we just discussed earlier?

25 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

1 THE WITNESS: Yes.

2 BY ATTORNEY KOLESK:

3 Q. And when you went into the IT vendor, what  
4 kind of instructions did you provide to them?

5 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

6 THE WITNESS: As I've already discussed, I  
7 told him what my attorney was looking for, my browsing  
8 history to cover the period covering these text  
9 messages that they needed the browsing the history to  
10 cover that period, to produce that so I could forward  
11 it to my attorney.

12 BY ATTORNEY KOLESK:

13 Q. Did you provide him written instructions or  
14 just oral instructions?

15 A. Oral.

16 Q. Did you bring any notes with you?

17 A. No. I met with him personally, brought my  
18 laptop over. I did call him prior to that simply to  
19 make a time to stop by when he would be there.

20 Q. Did you identify which of your browsers  
21 that you wanted your history for?

22 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

23 THE WITNESS: No. I just told him I needed  
24 my browsing history created in a file that I could  
25 forward.

1 BY ATTORNEY KOLESK:

2 Q. Did you identify whether that was to  
3 include, like, a Chrome browser, an Edge browser, or  
4 any other browser?

5 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

6 THE WITNESS: No. I didn't specify any  
7 browser, just my browsing history.

8 BY ATTORNEY KOLESK:

9 Q. So you don't know if this I- -- this -- if  
10 the IT Evolution searched for all of the browsers you  
11 may have used on that laptop?

12 ATTORNEY FERNANDEZ DEL CASTILLO: Form,  
13 foundation.

14 THE WITNESS: No, I don't know.

15 BY ATTORNEY KOLESK:

16 Q. Did you ask them to do any other additional  
17 work on your laptop before -- any other additional work  
18 on your laptop besides creating the spreadsheets of  
19 your browsing history?

20 A. No.

21 Q. Did you ever work with them before?

22 A. I purchased the -- the laptop I have right  
23 now from him.

24 Q. And did you ever bring in -- your laptop in  
25 for any IT-related work before this visit?

1 A. I believe several years ago he upgraded the  
2 ram from 4 to 8. That would have been probably been  
3 two, three years ago.

4 Q. Have you visited IT Evolution with your  
5 laptop since September 16, 2024?

6 A. No.

7 Q. Have you visited any other IT vendors for  
8 work on your laptop at any time?

9 A. No.

10 Q. Did you ask IT Evolution to exclude or omit  
11 any information from the spreadsheets?

12 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

13 THE WITNESS: No.

14 BY ATTORNEY KOLESK:

15 Q. Did IT Evolution provide you with any  
16 advice about how to collect or preserve your browsing  
17 history?

18 A. No.

19 Q. How did they hand over the spreadsheets to  
20 you that you -- how did they hand over the spreadsheets  
21 to you?

22 A. I believe I answered that earlier. He  
23 created a file, forwarded it to my Gmail account. From  
24 my Gmail account, I forwarded it to Daniel Winter.

25 Q. And I'm sorry if I didn't get the exact

1 date you told him to search for.

2 What was the date range that you asked him to  
3 search for?

4 A. Whatever was asked for by my attorneys. It  
5 would have been --

6 Q. Okay.

7 A. -- I believe the week prior to the first  
8 text -- text message, perhaps to a week after the last  
9 text message I received from American Home Shield.

10 Q. And did you provide these spreadsheets to  
11 your counsel after your visit to IT Evolution?

12 A. Yes.

13 Q. So your counsel knew that you received  
14 assist- -- assistance from an IT vendor in creating  
15 these spreadsheets?

16 ATTORNEY FERNANDEZ DEL CASTILLO:  
17 Objection.

18 To the extent it calls for privileged  
19 discussions, don't answer the question. To the extent  
20 you can answer without disclosing privileged  
21 communications, go ahead and answer.

22 THE WITNESS: I just -- I provided the  
23 receipt, yes.

24 BY ATTORNEY KOLESK:

25 Q. Do you know who specifically at IT

1 Evolution worked on your device?

2 A. Owner of the company.

3 Q. Do you know his name?

4 A. I would have to look it up in my phone.

5 Q. Okay.

6 A. If you want me to, I can look.

7 Q. It's up to counsel if you want him to be  
8 able to look at his phone.

9 ATTORNEY FERNANDEZ DEL CASTILLO: Don't --  
10 don't -- don't -- don't do that --

11 THE WITNESS: Okay.

12 ATTORNEY FERNANDEZ DEL CASTILLO: --  
13 Mr. Van Elzen.

14 BY ATTORNEY KOLESK:

15 Q. Do you know how long they had physical  
16 possession of your laptop on September 16th?

17 A. I don't recall if he completed it while I  
18 was there, but it was done that day. It might have  
19 been a couple hours. I don't recall.

20 Q. Were you there the whole time that he was  
21 working on the laptop?

22 A. I don't recall.

23 Q. Do you have any way of knowing whether  
24 IT Evolution deleted any of your browsing history?

25 A. I don't see any reason they would have done

1 that. But no, I wouldn't know.

2 Q. Do you have any reason -- do you have any  
3 reason to -- do you have any reason to know if they  
4 changed any device or browsing settings on your laptop?

5 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

6 THE WITNESS: He did nothing more than what  
7 I asked him to do.

8 BY ATTORNEY KOLESK:

9 Q. Did they provide any written descriptions  
10 of their work?

11 A. All he did is he tell -- he told me how he  
12 created it, where to locate it, and that it would be in  
13 my Gmail account.

14 Q. Okay. Are you the sole user of your  
15 personal laptop?

16 A. Yes.

17 Q. Has anyone besides you used this laptop at  
18 any point from August 1st, 2024, to the date you  
19 provided it for inspection, besides the IT vendor we  
20 just discussed?

21 A. No.

22 Q. Okay.

23 ATTORNEY KOLESK: We can pull up Tab 38.

24 And I'll mark this as Exhibit 38.

25 (EXHIBIT 28 WAS MARKED FOR IDENTIFICATION.)

1 THE VIDEOGRAPHER: Just to confirm for the  
2 record, this would be Exhibit 28, correct, Counsel?

3 ATTORNEY KOLESK: Yes. I'm sorry. Thank  
4 you.

5 THE VIDEOGRAPHER: Okay. No problem. No  
6 problem. I -- I just bring it up just in case for the  
7 record. You know?

8 ATTORNEY KOLESK: No, I appreciate that.

9 THE VIDEOGRAPHER: No problem.

10 BY ATTORNEY KOLESK:

11 Q. Okay. Mr. Van Elzen, do you recall seeing  
12 this document before?

13 **A. I don't recall seeing it, no.**

14 Q. Okay. I'll represent to you this document  
15 was produced by the invest- -- the third-party  
16 investigator pursuant to the inspection protocol that  
17 we've been discussing around August 15, 2025.

18 So did you have an opportunity to review this  
19 document before it was produced to the defendant?

20 **A. I did not review it.**

21 Q. Okay. Do you know without -- are you aware  
22 that anything has been withheld or redacted from this  
23 document on the basis of privilege or relevance?

24 ATTORNEY FERNANDEZ DEL CASTILLO:  
25 Foundation.

1                   **THE WITNESS: Nothing I'm aware of.**

2 BY ATTORNEY KOLESK:

3           Q.       Okay. And you can see on the document  
4 there are a few URL entries and last visited date and  
5 times.

6           Do you understand that this is a document that  
7 reflects your browsing history for those dates and  
8 times?

9           **A.       I would assume that is true.**

10          Q.       If you look at the bottom, you know,  
11 there's one that says, like, "lifesitenews."

12          Do you recall visiting a website like that at any  
13 point?

14          **A.       I probably have, yes.**

15          Q.       And like the New York post at Number 7;  
16 this appears to be a news article?

17          **A.       I probably did, yes.**

18          Q.       Okay. So to the best of your knowledge,  
19 are these entries in the document a true and correct  
20 reflection of some of your internet -- internet  
21 activity for the relevant period?

22          **A.       I would assume that's true.**

23          Q.       Okay. So if you look at the top three  
24 entries on this -- on this document, they are for URLs  
25 that say, like, "homeq.cc," "homeq.cc," and then

1 there's one that's called my  
2 "homequote.com/gutter-quotes."

3 Do you see that?

4 **A. I do see that.**

5 Q. Do you recall visiting the website  
6 myhomequote.com on or around August 19th, 2024?

7 **A. I don't recall going there, no.**

8 ATTORNEY KOLESK: Marcus, I'm going to ask  
9 you to pull up Exhibit -- I mean Tab 39, which I'll  
10 mark as Exhibit 29.

11 (EXHIBIT 29 WAS MARKED FOR IDENTIFICATION.)

12 BY ATTORNEY KOLESK:

13 Q. And this is a -- another report.  
14 Have you viewed this document before,  
15 Mr. Van Elzen?

16 **A. That one I believe I saw, yes.**

17 Q. Okay. And you can see it says, you know,  
18 Chrome web visits before and after my visits to  
19 myhomequote.com?

20 **A. I see it, yes.**

21 Q. And you can see a URL for a Facebook story  
22 on August 19th, '24?

23 ATTORNEY KOLESK: If you can just scroll  
24 over, Marcus, so you can see the time stamp on it.

25 ///

1 BY ATTORNEY KOLESK:

2 Q. Do you see that URL?

3 ATTORNEY KOLESK: Marcus, you can scroll  
4 back to that Facebook one.

5 Thank you.

6 BY ATTORNEY KOLESK:

7 Q. Do you recall seeing a Facebook ad on that  
8 day?

9 A. **No. That was over a year ago. No, I don't**  
10 **recall.**

11 Q. Do you recall ever seeing a Facebook ad for  
12 myhomequote.com?

13 A. **I do not recall that, no.**

14 Q. Is it possible you clicked on a link on a  
15 Facebook ad for myhomequote.com?

16 A. **It's possible I did it by accident. I**  
17 **would have no reason to.**

18 Q. Okay.

19 ATTORNEY KOLESK: Marcus, do you mind  
20 pulling up Tab 40, which I'll mark as Exhibit 30.

21 (EXHIBIT 30 WAS MARKED FOR IDENTIFICATION.)

22 BY ATTORNEY KOLESK:

23 Q. And so, Mr. Van Elzen, these are  
24 screenshots of the URL entries that we just discussed  
25 on your browsing history.

1           **A.**       **Uh-huh.**

2           Q.        Could you have visited these websites in or  
3 around August 2024?

4           **A.**       **Not to my knowledge. If I would have done**  
5 **so, it would have been by accident. I would have no**  
6 **need of it.**

7           Q.        Okay.

8                    ATTORNEY KOLESK: Marcus, do you mind  
9 pulling up Tab 41? And we'll mark that as Exhibit 31.

10                    (EXHIBIT 31 WAS MARKED FOR IDENTIFICATION.)

11 BY ATTORNEY KOLESK:

12           Q.        And you can see on this document it says  
13 specialist gutter installation contractors near me. It  
14 asks for your project zip code and next step.

15                    Do you recall seeing this?

16           **A.**       **I don't recall seeing that, no.**

17           Q.        Okay.

18                    ATTORNEY KOLESK: And Tab 42, Marcus, we'll  
19 pull up as Exhibit 32.

20                    (EXHIBIT 32 WAS MARKED FOR IDENTIFICATION.)

21 BY ATTORNEY KOLESK:

22           Q.        Again, this is a -- this is the same  
23 website. It says, what is the aim of your guttering  
24 project?

25                    Do you recall seeing a website like this ever?

1           **A.**       **I don't recall seeing it, no.**

2           **Q.**       Okay.

3                   ATTORNEY KOLESK: And Tab 43 we'll pull up  
4 as Exhibit 33.

5                               (EXHIBIT 33 WAS MARKED FOR IDENTIFICATION.)

6 BY ATTORNEY KOLESK:

7           **Q.**       Do you see here the website that says,  
8 enter your zip code to get matched with local gutter  
9 contractors?

10                   Do you recall ever seeing this website?

11           **A.**       **No, I don't.**

12           **Q.**       Is there any chance you could have  
13 mistakenly browsed through this website?

14           **A.**       **I don't believe so. I would have no need**  
15 **to get a gutter quote or anything, any home repair or**  
16 **anything, so I can't believe I did it. No. Even**  
17 **accidentally.**

18           **Q.**       Okay.

19                   ATTORNEY KOLESK: And, Marcus, do you mind  
20 just pulling up Exhibit 36 -- I mean, sorry, Tab 46,  
21 and I'll mark it as Exhibit 30 -- or wait. Sorry.  
22 Sorry.

23                   Where are we? We're at Tab 43.

24                   THE VIDEOGRAPHER: Yes.

25                   ATTORNEY KOLESK: Can you pull up Tab 44 as

1 Exhibit 34?

2 THE VIDEOGRAPHER: Okay. 44.

3 (EXHIBIT 34 WAS MARKED FOR IDENTIFICATION.)

4 BY ATTORNEY KOLESK:

5 Q. And again, this one, same website, My Home  
6 Quote, and it asks you to enter your first and last  
7 name.

8 Do you recall ever seeing this part of the  
9 website?

10 **A. No, I don't recall. No.**

11 ATTORNEY KOLESK: And then, Marcus, can you  
12 pull up Tab 45? And we'll mark that as Exhibit 35.

13 (EXHIBIT 35 WAS MARKED FOR IDENTIFICATION.)

14 BY ATTORNEY KOLESK:

15 Q. Again, this is the same series and the same  
16 URL for My Home Quote, and this page asks for your  
17 email address.

18 Do you recall seeing this website?

19 **A. No, I never recall seeing it.**

20 Q. Did you -- do you ever remember entering  
21 your email address on a website like this?

22 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

23 **THE WITNESS: No, I don't.**

24 ATTORNEY KOLESK: On Tab 46 -- can we mark  
25 that as Exhibit 36, Marcus?

1 (EXHIBIT 36 WAS MARKED FOR IDENTIFICATION.)

2 BY ATTORNEY KOLESK:

3 Q. So Tab 46, again the same URL from My Home  
4 Quote. This asks you to enter your phone number to get  
5 verbal quotes from local contractors.

6 Do you ever remember seeing a website like this  
7 asking for your phone number for a quote from local  
8 contractors?

9 A. No.

10 Q. Do you re- -- do you ever remember clicking  
11 on a link like the highlighted hyperlinks on this page?

12 Do you see one that says terms of use, privacy  
13 policy, our partners list?

14 A. No.

15 Q. Do you see on this page where if a user  
16 were to click on that link, do you understand that  
17 would bring up a list of partners that could receive  
18 information from that sign-up process?

19 A. I imagine so.

20 Q. Okay.

21 ATTORNEY KOLESK: Marcus, do you mind  
22 pulling up Tab 47? We'll mark this as Exhibit 37.

23 (EXHIBIT 37 WAS MARKED FOR IDENTIFICATION.)

24 ATTORNEY KOLESK: And if you can scroll  
25 down a little bit further. And it starts to go in

1 alphabetical order on the second page.

2 **A little bit further down. You can see**  
3 **that -- where it says American Home Shield.**

4 BY ATTORNEY KOLESK:

5 Q. Do you ever remember viewing a list of  
6 partners from a website from myhomequote.com?

7 **A. No. There would be no reason to.**

8 Q. Okay.

9 ATTORNEY KOLESK: Marcus, do you mind if we  
10 just pull back up Tab 39, which is Exhibit 29.

11 And you see that there's -- after the last  
12 hit from myhomequote.com, if you scroll over to the --  
13 the far right column for the time stamps.

14 BY ATTORNEY KOLESK:

15 Q. And do you see how the second-to-last  
16 column, Mr. Van Elzen, has a last visited date and time  
17 of August 19th and the time stamp reads 5104, and the  
18 one underneath of it is the same date, August 19th,  
19 '24, but with the time stamp of 5313?

20 **A. I see that, yes.**

21 Q. Do you -- did you ever delete any of your  
22 browser history, like individual sites that you may  
23 have visited for any reason?

24 ATTORNEY FERNANDEZ DEL CASTILLO: Asked and  
25 answered.

1 BY ATTORNEY KOLESK:

2 Q. Mr. Van Elzen, was that a no?

3 I couldn't hear you. I'm sorry.

4 **A. Yes, I did not.**

5 Q. Okay.

6 ATTORNEY KOLESK: Marcus, do you mind  
7 pulling up Tab 48, which I'll mark as Exhibit 48 [sic].

8 (EXHIBIT 38 WAS MARKED FOR IDENTIFICATION.)

9 BY ATTORNEY KOLESK:

10 Q. And before we discuss this one,  
11 Mr. Van Elzen, is there any reason why the My Home  
12 Quote URL would be in your browsing history that you  
13 can remember?

14 **A. Only visiting it by accident maybe thinking**  
15 **it was something different. I would have no reason to**  
16 **request any home repairs. I am a renter. My landlord**  
17 **provides the appliances. Any repairs to the home he**  
18 **handles. I have no say in it. So there would be no**  
19 **reason for me to get a quote.**

20 BY ATTORNEY KOLESK:

21 Q. Did --

22 **A. Nor did anybody else ask me to get a quote**  
23 **for them. I wouldn't have the expertise.**

24 Q. Does your landlord ever ask you to help him  
25 locate quotes for repairs that might need to be done to

1 the property?

2 A. I knew --

3 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

4 THE WITNESS: -- you were going to ask  
5 that, but no.

6 BY ATTORNEY KOLESK:

7 Q. Okay.

8 A. No. He -- he owns several properties.  
9 He's well able to handle that himself. He wouldn't  
10 need my advice on anything.

11 ATTORNEY FERNANDEZ DEL CASTILLO:

12 Mr. Van Elzen, please try to slow down.

13 THE WITNESS: Okay.

14 ATTORNEY KOLESK: And I'll mark -- showing  
15 you this -- another spreadsheet. We'll mark this as  
16 Exhibit 38, and it's a spreadsheet of internet browsing  
17 history that was found on your device during the  
18 inspection protocol.

19 BY ATTORNEY KOLESK:

20 Q. Do you recognize this spreadsheet?

21 A. I don't think I reviewed the -- this one  
22 here. That doesn't look familiar.

23 Q. Okay. Do you -- is this a spreadsheet that  
24 was likely created by your IT vendor; do you remember?

25 A. I don't recall. I don't know --

1 Q. Okay.

2 A. -- if it was my IT vendor or your  
3 inspector. I don't recall.

4 ATTORNEY KOLESK: Marcus, this might be a  
5 little bit tricky, but there's an entry I would like to  
6 find on August 3rd, 2024. So if could you go to the  
7 date and time, you'll have to probably scroll down a  
8 bit.

9 There's quite a number of spreadsheets, so  
10 just be patient, Mr. Van Elzen, while we locate it.

11 If it -- Marcus, do you have the ability to  
12 search and -- for a record?

13 THE VIDEOGRAPHER: Not through this.

14 ATTORNEY KOLESK: Okay. If you can keep --  
15 we'll just keep scrolling, then. That's fine.

16 THE VIDEOGRAPHER: And can you state the  
17 date again?

18 ATTORNEY KOLESK: It's August 3rd, so we're  
19 going to have to go way down.

20 THE VIDEOGRAPHER: Got it. Okay.

21 ATTORNEY KOLESK: And you can pause right  
22 there for a second?

23 BY ATTORNEY KOLESK:

24 Q. And just, Mr. Van Elzen, as you can see,  
25 some of these entries have -- you know, if you look

1 at -- it has, like, your Gmail address.

2 And so this, as you -- far as you know, would  
3 contain some of your URL browsing history?

4 **A. I would assume so, yes.**

5 Q. Okay.

6 ATTORNEY KOLESK: Go ahead, Marcus.

7 Marcus, it might speed things up a little  
8 bit if you want to use the scroller on the far right  
9 just to pull it like all the down, if you're able to --

10 THE VIDEOGRAPHER: Not able to --

11 ATTORNEY KOLESK: Oh, you're not able to?

12 THE VIDEOGRAPHER: No.

13 ATTORNEY KOLESK: Okay.

14 THE VIDEOGRAPHER: But I see here we're on  
15 August 2nd, it looks --

16 ATTORNEY KOLESK: No, we're on September.

17 Okay.

18 THE VIDEOGRAPHER: September, yeah.

19 ATTORNEY KOLESK: Well, Mr. Van Elzen, I'll  
20 just ask you so we don't have to -- if you're okay with  
21 it, and your counsel can object if he wants to.

22 BY ATTORNEY KOLESK:

23 Q. This spreadsheet shows that on August 3rd,  
24 2024, at approximately 1:32 a.m. UTC, you visited a  
25 link for homebuddy.com for gutter guards.

1 Do you recall visiting that website?

2 **A. No, I don't recall visiting it.**

3 Q. Do you recognize the name of the website  
4 HomeBuddy or my homebuddy.com?

5 **A. I never recall visiting that, no.**

6 ATTORNEY KOLESK: On Tab 49 -- oh, can we  
7 pull up -- Marcus, do you mind if we pull up Tab 49?

8 (EXHIBIT 39 WAS MARKED FOR IDENTIFICATION.)

9 BY ATTORNEY KOLESK:

10 Q. And this is a screenshot of the URL that  
11 appeared in your browsing history for HomeBuddy.

12 Do you recall ever seeing a website like this?

13 **A. I never recall seeing that.**

14 Q. And so you don't recall ever entering your  
15 information on a website like this?

16 **A. Once again, I would have no reason to, so  
17 no.**

18 ATTORNEY KOLESK: And I'll just mark this  
19 as Exhibit 39. Okay.

20 Marcus, do you mind pulling up Tab 50?

21 (EXHIBIT 40 WAS MARKED FOR IDENTIFICATION.)

22 BY ATTORNEY KOLESK:

23 Q. Do you recall seeing this part of a website  
24 ever?

25 And it says it's for homebuddy.com, it says in the

1 final step, what is your phone number, and asks for  
2 a -- a user to enter their phone number.

3 Do you ever recall entering your phone number on a  
4 website like this?

5 **A. No.**

6 ATTORNEY KOLESK: Okay. I'll mark that one  
7 as Exhibit 40.

8 And, finally, Marcus, do you mind pulling  
9 up Tab 51? And I'll mark this as Exhibit 51 [sic].

10 (EXHIBIT 41 WAS MARKED FOR IDENTIFICATION.)

11 BY ATTORNEY KOLESK:

12 Q. And did you ever -- did you ever visit  
13 homebuddy.com's privacy policy?

14 **A. I never recall visiting that, no.**

15 Q. When you generally browse the internet, do  
16 you ever review the website's privacy policy as part of  
17 your browsing activity?

18 **A. That's not a practice I've done, no.**

19 Q. Okay. Do you recall ever entering your  
20 phone or email address in any home repair related  
21 websites in the month of August 2024?

22 **A. No.**

23 Q. Okay.

24 ATTORNEY KOLESK: Marcus, you can put that  
25 one down.

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REPORTER'S CERTIFICATE

I, DANNIELLE COPELAND, RDR, CRR, DO HEREBY CERTIFY THAT THE FOREGOING DEPOSITION OF DAVID VAN ELZEN WAS TAKEN BEFORE ME AT THE TIME AND PLACE AND FOR THE PURPOSE IN THE CAPTION STATED; THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH; THAT THE DEPOSITION WAS TAKEN BEFORE ME STENOGRAPHICALLY AND AFTERWARDS TRANSCRIBED UNDER MY DIRECTION; THAT THE FOREGOING IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID DEPOSITION SO GIVEN; THAT THERE WAS A REQUEST THAT THE WITNESS READ AND SIGN THE TRANSCRIPT; THAT THE APPEARANCES WERE AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR OF KIN TO ANY OF THE PARTIES TO THIS ACTION, AND AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID ACTION.

WITNESS MY SIGNATURE ON SEPTEMBER 29, 2025.

*Dannielle Copelan*

\_\_\_\_\_  
DANNIELLE COPELAND, RDR, CRR  
CALIFORNIA CSR 14444

# EXHIBIT Q



gives you a unique opportunity to get quotes from local gutter installers

100%

Dozens of lucrative options have been found by your request

Enter your phone number to get verbal quotes from local contractors:

Enter phone number

By submitting this request, I provide my electronic signature and agree to MyHomeQuote's **Terms of Use & Privacy Policy** and **authorize marketing companies**, their contractors, and home improvement service product partners including QuinStreet (our partners list), HomeBuddy (our partners list), to send me offers via email as well as phone and text messages at the provided number. I understand that MyHomeQuote may contact me via SMS to provide updates regarding my request. Message and data rates may apply. Message frequency varies. Reply STOP to opt out. Only MyHomeQuote will send me SMS notifications. I agree to be contacted by the mentioned groups even if my contacts are registered in any state or federal Do Not Call list. I agree to be contacted by the listed groups, even if I'm on a federal/state do-not-call list. I understand marketing messages may be sent via autodialer or prerecorded voice. My consent isn't a purchase condition and can be revoked anytime. **California Notice.**

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BACK

SUBMIT

Your data is secure

David Van Elzen  
Exhibit 36

Danielle Copeland, CSR 09.25.25

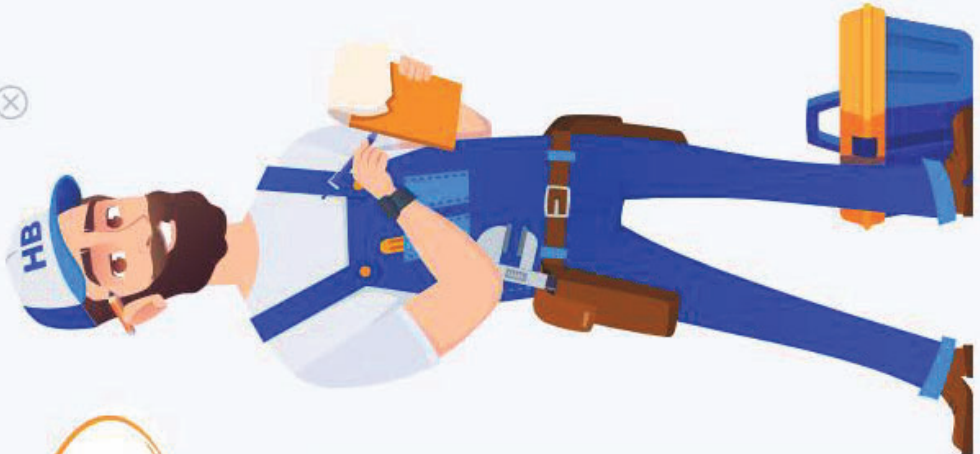
+183355832785

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Explore our expansive network of home improvement contractors, spanning multiple specializations and serving nationwide

# **EXHIBIT R**

**David Van Eizen**  
**Exhibit 40**  
Danielle Copeland, CSR 09.25.25



## And the final step. What is your phone number?

A valid phone number is required to issue a formal estimate.

 Phone number

Submit my request



**122,094** reviews on TrustPilot

By clicking "Submit my request", I am providing my e-signature and agree that LeafFilter® may call or text me using an automatic dialing system or artificial or prerecorded voice, to arrange a convenient in-home estimate or for other marketing purposes related to home improvement. I understand consent is not required as a condition of purchase, and that I may revoke my consent at any time. Msg / data rates may apply.

 Safe, Secure and Confidential

# **EXHIBIT S**



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1 THE VIDEOTAPED DEPOSITION OF JORGE REYES, TAKEN  
2 PURSUANT TO NOTICE HERETOFORE FILED, VIA ZOOM  
3 VIDEOCONFERENCE, ON OCTOBER 30, 2025, AT APPROXIMATELY  
4 8:02 A.M., PACIFIC TIME, UPON ORAL EXAMINATION, AND TO  
5 BE USED IN ACCORDANCE WITH THE CALIFORNIA CODE OF CIVIL  
6 PROCEDURE.

7

8

\*\*\* \*\*

9

10

APPEARANCES

11

12

VIA ZOOM VIDEOCONFERENCE

13

14

15

FOR THE PLAINTIFFS:  
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18

19

20

FOR THE DEFENDANT:  
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TKOLESK@GIBSONDUNN.COM

23

24

ALSO PRESENT:  
AMARIS AKER, VIDEOGRAPHER

25

1 THE VIDEOGRAPHER: We are now on the  
2 record. This is the beginning of Media 1 in the  
3 deposition of Jorge Reyes in the matter of David  
4 Van Elzen versus American Home Shield Corporation, Case  
5 Number 24-1206, being held remotely.

6 This deposition is being taken on behalf of  
7 the defendant on October 30th, 2025, at 8:02 a.m. The  
8 court reporter is Dannielle Copeland, and I am Amaris  
9 Aker, the videographer, on behalf of First Legal  
10 Depositions, located in Los Angeles, California.

11 This deposition is being videotaped at all  
12 times unless specified to go off the video record.

13 Would all present please identify  
14 themselves, beginning with the noticing attorney.

15 ATTORNEY KOLESK: Yes. Good morning. This  
16 is Timothy Kolesk from Gibson Dunn & Crutcher on behalf  
17 of Defendant American Home Shield.

18 THE WITNESS: Jorge --

19 ATTORNEY FERNANDEZ DEL CASTILLO:  
20 Francisco -- sorry.

21 THE WITNESS: Sorry. Go ahead.

22 ATTORNEY FERNANDEZ DEL CASTILLO: Francisco  
23 Fernandez on behalf of plaintiff.

24 THE VIDEOGRAPHER: Would the court reporter  
25 please swear in the witness.

1 THE REPORTER: I am Dannielle Copeland,  
2 Certified Shorthand Reporter 14444.

3 Mr. Reyes, will you please raise your right  
4 hand?

5

6 JORGE REYES, CALLED AS A WITNESS HEREIN,  
7 HAVING BEEN FIRST DULY SWORN ON OATH, WAS EXAMINED AND  
8 TESTIFIED AS FOLLOWS:

9

10 EXAMINATION

11

12 BY ATTORNEY KOLESK:

13 Q. Okay. Good morning, Mr. Reyes.

14 Can you just state your full name and business  
15 address so we have it on the record?

16 A. Jorge Reyes. The business address is 212  
17 East College Avenue, Appleton, Wisconsin 54911.

18 Q. Okay. And what is your current position  
19 and role at IT Evolution, LLC?

20 A. I'm the owner.

21 Q. Are there any other employees of IT  
22 Evolution?

23 A. There's only one, but he's not here right  
24 now.

25 Q. And have you ever had your deposition taken

1 before?

2 A. I'm not sure what you mean.

3 Q. Have you ever been in a -- a deposition in  
4 a legal proceeding before?

5 A. Oh, no.

6 Q. Okay. So if any time you don't understand  
7 a question, I just ask that you let me know and I'll  
8 try to clarify for you. And just some ground rules  
9 like please answer audibly and wait for any objection  
10 before answering. Okay?

11 A. Okay.

12 Q. And so do you have any medical conditions  
13 you believe may affect your ability to testify today?

14 A. No.

15 Q. Did you take any drugs, alcohol, or  
16 medications before this morning?

17 A. Not at all.

18 Q. Did you do anything to prepare for today's  
19 deposition?

20 A. No.

21 Q. Did you do any -- did you review any  
22 documents before the deposition, in preparation for it?

23 ATTORNEY FERNANDEZ DEL CASTILLO: Form.

24 THE WITNESS: No. Just the paperwork for a  
25 little bit, the paperwork -- paperwork I received

1 from -- the subpoena, or whatever it's called.

2 BY ATTORNEY KOLESK:

3 Q. So you reviewed the subpoena and the  
4 accompanying documents to the subpoena?

5 A. Yeah, just a little bit.

6 Q. Did you --

7 A. I'm not too familiar with the -- all the  
8 lingo, so...

9 Q. Okay. Did you review any other documents  
10 besides the subpoena?

11 A. No.

12 Q. Okay. Did you talk to anyone about this  
13 litigation in preparation for today?

14 A. Nope.

15 Q. Did you consult with any attorneys to  
16 prepare for today's deposition?

17 A. I didn't.

18 Q. And -- sorry.

19 That was you did not?

20 A. No.

21 Q. Okay. Great.

22 Mr. Reyes, can you just describe your education as  
23 relevant to computer maintenance, data collection, or  
24 digital forensics?

25 A. I have an associate's degree in computer

1 support specialist.

2 Q. Okay. Do you have any training or  
3 certifications related to computer maintenance, data  
4 collection, or digital forensics?

5 A. Not currently, no.

6 Q. And where was your associate's degree from?

7 A. Fox Valley Technical College.

8 Q. Are you certified by any recognized  
9 forensic organization or tool vendor?

10 A. No.

11 Q. Do you consider yourself a digital  
12 forensics professional?

13 A. I mean, it totally depends on what --  
14 what -- like in what -- what field?

15 Q. Okay. How would you describe the work that  
16 you do for IT Evolution?

17 A. Well, I do pretty much any -- so computer  
18 support specialist covers a little bit of pretty much  
19 everything. That would be networking, a little bit  
20 of -- mostly just computers repair, cell phone repair,  
21 a little bit of data recovery, computer setup, customer  
22 service, computer support.

23 Q. Okay. How -- does -- do you or IT  
24 Evolution perform work that is intended for use in  
25 litigation, like in a lawsuit?

1 A. I'm not sure. What do you mean?

2 Q. I guess have you ever been hired for -- to  
3 help someone prepare their computer for use in a  
4 lawsuit?

5 A. No.

6 Q. Okay. Have you ever been retained to  
7 collect or preserve electronic data for lawsuits?

8 A. Sometimes people come and they need the --  
9 like retrieve the information from their broken  
10 computer, so let's say for other -- the -- the husband  
11 and wife got in a fight or something and they want to  
12 save now the messages and all that stuff that they  
13 found, so that's pretty much what the -- I've been  
14 contacted, just from -- yeah, sometimes people stop by  
15 and try to get information uncovered or -- to use in  
16 court as testimony, or whatever it's called.

17 Q. Have you ever had to testify in any of  
18 those proceedings?

19 A. No.

20 Q. And have you ever been retained by a law  
21 firm as an expert in a legal proceeding?

22 A. No.

23 Q. Okay. When someone comes in like the  
24 example that you referenced of a husband or wife in a  
25 dispute, did you follow a written protocol when you

1 sought the information they were looking for?

2 A. No.

3 Q. Okay. Did you generate any chain of  
4 custody forms or imaging logs?

5 A. No.

6 Q. Do you recall when you first met Mr. David  
7 Van Elzen?

8 A. Yes. It's been a long time. He's a  
9 regular customer. Yeah, probably like nine to ten  
10 years ago.

11 Q. Okay. And so when you reviewed the  
12 subpoena this morning, did you recognize his name on  
13 the subpoena?

14 A. Yeah. Yeah, I did.

15 Q. And did you recog- -- recognize him as a  
16 long-term -- time customer of IT Evolution?

17 A. Correct. Yes.

18 Q. Okay. And before September 2024, how often  
19 would he come in for computer repair services?

20 A. He's been here probably like between five  
21 to seven times in the -- on the period that I know him.  
22 So he got a computer from me, a couple of computers,  
23 and he asks sometimes for -- when he's having issues  
24 with his computer, he stops by. And he's basically a  
25 regular compute -- customer.

1 Q. And so, you know, what kind of work did you  
2 do for him when he would visit your store?

3 A. Sometimes he needs like computer parts if  
4 his power cord is broken. I think that's one of the  
5 things he needed from me. Computer setup, a different  
6 computer that he bought, and something about his  
7 internet records. I think he -- he wanted to see the  
8 history of his records.

9 Q. And for him wanting to see the history of  
10 his internet records, was that the work that you -- he  
11 contacted you about in or around September 2024?

12 A. Must be it. I think that was the last time  
13 I seen him.

14 Q. And you haven't seen him since that time?

15 A. I don't think I have, unless it was after  
16 when he came -- I don't remember if it was the first  
17 time he came to get the records or after -- I mean,  
18 he -- he got the -- a power cord, a charger for his  
19 laptop, but I don't remember if it was before that or  
20 after.

21 Q. Okay.

22 ATTORNEY KOLESK: And can we go ahead and  
23 introduce Tab 1 as -- and let's label it Exhibit 42 to  
24 continue from where we left off.

25 (EXHIBIT 42 WAS MARKED FOR IDENTIFICATION.)

1 BY ATTORNEY KOLESK:

2 Q. And, Mr. Reyes, is this the receipt for the  
3 work that you did for Mr. Van Elzen?

4 This is the document that you emailed me in  
5 response to the subpoena.

6 A. That should be it, yeah. I think that's  
7 the last one I have in there. It's the -- the same as  
8 in the subpoena.

9 Q. Okay. Great.

10 And so besides this document, there -- there were  
11 no other documents you had in your possession related  
12 to your work on --

13 A. No, I --

14 Q. -- Mr. Van --

15 A. That's going to be the la- -- the only one.  
16 Since he's a regular customer, he just came and he  
17 brought his laptop and we just started working on it  
18 right away.

19 Q. Okay.

20 ATTORNEY KOLESK: Can you just -- you can  
21 take the exhibit down now.

22 Thank you so much.

23 BY ATTORNEY KOLESK:

24 Q. Okay. And can you describe as best you can  
25 what Mr. Van Elzen asked you to do when he brought in

1 the device?

2 A. I think I -- I think he was looking -- this  
3 has been -- it's been a while, and I have sometimes  
4 quite a bit of laptops and computers to work on.

5 I believe he was looking for some kind of records  
6 and -- from -- I -- I don't remember if it was from  
7 that or from his phone, to get calls, to -- to see the  
8 history to -- of the calls or something like that,  
9 because he was receiving some unwanted calls, I think.

10 Q. Okay. So you -- you can't remember if it  
11 was his laptop or his computer -- I mean his laptop or  
12 his phone or both?

13 A. I can't -- I can -- I cannot remember. I  
14 remember one time he brought it for -- for -- to get  
15 all the history of his records, but I'm not sure if it  
16 was because of that or all the calls or -- I don't -- I  
17 don't remember.

18 Q. Okay. So you could -- you -- you don't  
19 remember if you looked at his cell phone at all during  
20 that visit in September 2024?

21 A. No, I don't. I don't remember.

22 Q. But you -- but you may have looked at  
23 his -- his cell phone?

24 A. I -- I don't -- I don't remember that part.  
25 I -- to be honest, I -- I just --

1 Q. Okay.

2 A. I remember he came for -- like to get the  
3 history on his laptop, I believe, but I'm not sure if  
4 he came with the -- I just don't remember if we did  
5 something with his phone.

6 Q. Okay. Do you remember the -- the make or  
7 model of the laptop?

8 A. I believe he has a Dell. It's an old Dell  
9 laptop. It's very old. I think it's the -- one of  
10 the -- the first ones I sold to him. I don't remember  
11 the model.

12 Q. And did he physically deliver the laptop to  
13 you, your office?

14 A. Yeah. Yeah. He came -- he came and --

15 Q. Do --

16 A. -- like I said, we probably started working  
17 on it. I normally give like a work order for the  
18 customer to fill with information before I start  
19 working on it, but since he's a regular customer, we  
20 started just doing it.

21 Q. Okay. And was the laptop password  
22 protected or encrypted when you received it?

23 A. I don't believe so. It might have a  
24 password or pass code, but I don't remember.

25 Q. Did you connect the laptop to the internet

1 at all during your work?

2 A. I might. Yeah, if we -- probably we needed  
3 records of -- or the history, probably I was able to  
4 connect to the network, yeah.

5 Q. And so connecting it to the internet was --  
6 would be necessary to obtain the -- his internet  
7 history?

8 A. I think that's the only way to get it to  
9 load Google. I think he uses Google.

10 Q. Did you take any steps to preserve the  
11 device's condition before beginning your work?

12 A. No.

13 Q. Did you take a forensic image of the  
14 device -- device before interacting with any files?

15 A. No.

16 Q. Why -- why wouldn't you do that, out of  
17 curiosity?

18 A. Like if -- I mean, he's just a regular  
19 customer, I -- you know, I didn't find it necessary.

20 Q. Okay. And so as best you can, what  
21 services do you remember performing on his laptop?

22 A. I was just trying to get the history. I  
23 think he -- he was just trying to get the history of  
24 his calls or the Google search engine, all the history  
25 he could, I think.

1 Q. Do you remember if he specified any  
2 browsers in particular?

3 A. No. I think the -- the only one we -- he  
4 uses is Google. I might be wrong, but I think it was  
5 Google, the one we were working on.

6 Q. Do you remember if he gave you any specific  
7 time period that he was looking at for his internet  
8 history?

9 A. He gave me some dates, but I cannot  
10 remember the dates.

11 Q. And he didn't provide you with any written  
12 instructions as related to any dates or which browsers  
13 to look for?

14 A. No. Like I said, he just came and we  
15 started working on it.

16 Q. Okay. Did the work include attempting to  
17 export or otherwise collect his internet browsing  
18 history?

19 A. I think he -- I think he was trying to  
20 print them, print the whole history or something like  
21 that.

22 Q. Did you connect any external media or use  
23 any software utilities to access or copy data?

24 A. No, not with that one. I think I just  
25 showed him how to do -- to get history on Google or the

1 browser and to check and go back and...

2 Q. Other than the receipt, did you provide any  
3 deliverables back to Mr. Van Elzen, such as, you know,  
4 spreadsheets or reports of his internet browsing  
5 history?

6 A. No. That was just the receipt.

7 Q. Okay. Do you remember if Mr. Van Elzen  
8 said anything specific about the reason he was doing  
9 this?

10 A. I -- like I said, maybe -- I don't remember  
11 if it was that time, but he -- he says that he was  
12 getting some unwanted calls or something like that, he  
13 needed to get some records or something. That's -- I'm  
14 not sure.

15 Q. Okay. Do you recall any mention of a  
16 lawsuit or anticipated litigation?

17 A. I think -- I think he said something. It's  
18 just like -- I just can't remember the whole thing  
19 because it's been a while. I think he said something  
20 about that he was going to sue somebody because he was  
21 getting unwanted calls and he was on the Do Not Call  
22 list or something like that, so...

23 Q. Do you recall any other details about what  
24 he shared with you about that?

25 A. No. I think that's the only thing he -- he

1 said about it.

2 Q. Did Mr. Van Elzen -- do you recall if  
3 Mr. Van Elzen asked you to include or exclude any  
4 categories of data?

5 A. No. That was just history.

6 Q. Okay. Do you recall if he instructed you  
7 to delete anything on the device?

8 A. No.

9 Q. Did you provide any oral explanation to  
10 Mr. Van Elzen about what would you do to collect or  
11 export his browser history?

12 A. Like I said, yeah, we were here and it was  
13 like basically a one-on-one session. I showed him how  
14 to check for the history, where to click and how to do  
15 it. And then I think he was going to print or -- or --  
16 or he -- he was trying to print.

17 Q. Okay. I want to go back to your -- a  
18 question about, you know, not providing any  
19 deliverables to Mr. Van Elzen.

20 So was the purpose of his visit just so he could  
21 go back -- he could learn how to create his internet  
22 browsing history himself, or was he asking for you to  
23 create a record of his internet browsing history for  
24 him?

25 ATTORNEY FERNANDEZ DEL CASTILLO: Objection

1 to form.

2 THE WITNESS: He just wanted -- basically  
3 he just wanted to learn how to do it. He was here the  
4 entire time, and basically he wanted me to show him how  
5 to do it.

6 BY ATTORNEY KOLESK:

7 Q. And so you -- during that time he didn't  
8 leave the laptop with you for any extended period of  
9 time, or was he with the laptop the entire time with  
10 you?

11 A. I think he was here the entire time. I  
12 think he was here the entire time with -- just trying  
13 to get it done. Because it was only one hour work.  
14 That's why it's 31 dollars and some cents, because I  
15 only charge \$30 per hour, and then he was -- he was  
16 here a little longer than that I think.

17 Q. And when you say the 31 dollars and cents,  
18 you're referring to the amount that's on the receipt  
19 that you were able to -- that you were --

20 A. Correct.

21 Q. -- able to produce? Okay.

22 And so when you were sitting with him, was -- the  
23 idea was to basically teach him how to export his  
24 browsing history on his own after he left IT Evolution?

25 A. Right.

1 Q. Okay. Did you use any special software  
2 tools to export or copy his browsing history?

3 A. No. No, I didn't copy anything. I --  
4 basically everything was in the laptop, everything  
5 stayed there.

6 Q. Do you remember if he asked you if he --  
7 how to delete any specific entries in his internet  
8 browsing history?

9 A. I don't think he did, no. He just  
10 wanted -- I think he just wanted to find -- he wanted  
11 to learn how to find the browsing history and all that  
12 stuff, to check and go back in -- in time and check all  
13 the browsing.

14 Q. Did your work include deleting or removing  
15 any files on Mr. Van Elzen's laptop?

16 A. I don't think so.

17 Q. Is it possible that any steps you took, you  
18 know, opening any browsers, exporting data, resulted in  
19 deletions or overwrites that would leave no record?

20 A. I don't think so, no. Not while he was  
21 here because I guess if you -- I think he was just  
22 trying to find out how to go back in time and check out  
23 the history and stuff.

24 Q. Do you have any logs or records  
25 demonstrating that no deletions occurred during your

1 work with Mr. Van Elzen?

2 A. I don't, no.

3 Q. Is it possible that running a browser or  
4 opening a history database could modify metadata or  
5 create new entries?

6 A. I don't think so, only if you just delete  
7 stuff and -- only if you do it.

8 Q. Do you have any way to confirm now whether  
9 your work resulted in any deletions, like unintentional  
10 or intentional, of browser history?

11 A. What do you mean? Like...

12 Q. Do you have any way to confirm it just  
13 beyond your memory?

14 A. No. No. I can't -- I -- I don't remember.  
15 Like I said, he was probably here. He was just, like,  
16 trying to learn, basically, how to do it, how to get to  
17 the history and do -- check out the stuff by himself.

18 Q. Do you know how to delete files or logs in  
19 a manner that minimizes or eliminates traces of  
20 deletion?

21 A. You can use a special software to do that,  
22 and basically you just -- part of the computer -- and I  
23 don't think they can do it through a browser history.  
24 I don't know how to do it. You know? Like if I want  
25 to delete something from Google, I don't know how to do

1 that because the records stay there, I think, somehow.

2 Q. So certain browser history Excel  
3 spreadsheets were later found in Mr. Van Elzen's  
4 recycling bin on his laptop.

5 Do you recall creating any of those spreadsheets  
6 that were moved to his recycling bin?

7 A. I don't use -- I barely use any  
8 spreadsheets. I don't know -- I'm not too familiar  
9 with them. They're, like, not my thing, so --

10 Q. So -- go ahead. Sorry. Sorry for cutting  
11 you off.

12 A. It shouldn't -- it shouldn't be me, if I  
13 create any...

14 Q. Okay. So you don't remember when you were  
15 showing him how to create -- look at -- check out his  
16 internet browsing history, you didn't -- you didn't  
17 yourself export any of that browsing history into,  
18 like, an Excel spreadsheet or a .CSV file or anything  
19 like that?

20 A. Oh, no.

21 Q. Okay.

22 A. No.

23 Q. So did you at any point delete or send  
24 anything to the recycling bin on Mr. Van Elzen's  
25 laptop?

1 A. Not that I remember. Huh-uh.

2 Q. So beyond -- beyond the -- showing  
3 Mr. Van Elzen how to locate his internet browsing  
4 history, you didn't independently create any files  
5 related to his browsing history yourself?

6 A. I don't think I did, no.

7 Q. Okay. When you receive a laptop for  
8 service, do you typically create a work order or intake  
9 record?

10 A. Yes. With the -- basically with the like  
11 regular customers. I've been here in business for ten  
12 years, and -- I mean, when there are new customers. So  
13 regular customers, especially when the people just --  
14 and when they're, like, regular customers, I just do  
15 their work. I know them.

16 When they're like a little picky about stuff, yes,  
17 I create something. But if they're like -- just like  
18 regular customers, easy to work with, I just get  
19 hands-on.

20 Q. And so the way it went that -- when  
21 Mr. Van Elzen visited, you didn't create a work record  
22 because he just came in and asked you to help him  
23 figure out how to search for his internet browsing  
24 history; is that what -- how you remember it?

25 A. Yeah, I think so. Yeah.

1 Q. Do you remember emailing any files to  
2 Mr. Van Elzen after his visit?

3 A. I don't remember. I don't think I did, but  
4 I don't remember.

5 Q. And so, again, you didn't save any output  
6 on the laptop of his internet browsing history  
7 anywhere?

8 A. No. No.

9 Q. Okay. Do you remember if you provided any  
10 guidance to Mr. Van Elzen about preserving data or  
11 avoiding actions that could change his browsing  
12 history?

13 A. No. I think the only thing I found -- or  
14 told him how to just erase that history.

15 Q. You didn't happen to take any intake photos  
16 or document the laptop's condition?

17 A. No.

18 Q. Okay.

19 A. As a matter of fact, he -- he said he was  
20 coming back for another laptop because the one he has  
21 is kind of beat up. Yeah, I think his key was falling  
22 part and stuff like that, so -- but he took his own  
23 computer probably the same day. Yeah, he didn't leave  
24 it. He just worked here, he took it. I didn't take  
25 any pictures or anything. I didn't find that

1 necessary.

2 Q. At the time of your work, I know you  
3 mentioned he said something about getting unwanted  
4 calls, but did you understand Mr. Van Elzen was  
5 considering or involved in litigation?

6 A. He -- he said he was trying to find some  
7 records, I think, because he was on -- like an  
8 unwanted -- he was just getting calls, I think, or  
9 something like that. He was going to sue somebody  
10 because they were -- he was on the Do Not Call list and  
11 they were -- keep coming, calling.

12 Q. Did he ask you to preserve any data or  
13 follow a litigation hold or anything like that?

14 A. No.

15 Q. Did you advise Mr. Van Elzen about any  
16 steps to preserve data integrity?

17 A. I don't think I did, no. Probably the only  
18 thing I have to -- data is probably show him how to get  
19 to it, how to check the history of his browsing.

20 Q. So again, just to be clear, your testimony  
21 is that you do not keep -- you did not keep any records  
22 of what you did on Mr. Van El- -- Van Elzen's laptop  
23 beyond the receipt, correct?

24 A. Yeah. Correct.

25 Q. Okay. And your testimony is that you had

1 no role in creating any browser history spreadsheets  
2 that could have been found on Mr. Van Elzen's laptop?

3 A. Correct.

4 Q. You had no role in it, correct?

5 A. Correct. Yeah. I don't -- like I said,  
6 I -- I don't remember -- I don't think I saved any data  
7 or anything. I just showed him how to get to it.

8 Q. If you had deleted any records on a  
9 customer's device, whether at the customer's request or  
10 incidentally, would you create or retain a record of  
11 that deletion?

12 A. That totally depends on the case. If a  
13 customer wants -- let's say they're recycling a  
14 computer. I won't save anything, I just want the --  
15 the programs to delete everything. It's basically on  
16 their -- on the request.

17 Q. Is it your testimony that none of your  
18 actions included deletion or cleaning of  
19 Mr. Van Elzen's laptop?

20 ATTORNEY FERNANDEZ DEL CASTILLO: Objection  
21 to form.

22 Yeah, you can answer the question. I'm  
23 just objecting to the form of the question.

24 THE WITNESS: Yeah, I didn't -- I didn't --  
25 I don't know what you mean.

1 ATTORNEY KOLESK: Okay. If you wouldn't  
2 mind just giving me -- do -- can we go off the record  
3 for a second?

4 Francisco, is that okay?

5 ATTORNEY FERNANDEZ DEL CASTILLO: Yeah, of  
6 course.

7 ATTORNEY KOLESK: Can you just give me like  
8 two minutes to look over my notes, and then we can  
9 maybe wrap this up in five minutes, if that's okay, if  
10 everyone just hangs out for a second.

11 ATTORNEY FERNANDEZ DEL CASTILLO: Great.  
12 Awesome.

13 ATTORNEY KOLESK: Mr. Van Elzen, are you  
14 okay with -- I mean, sorry, Mr. Reyes, are you okay  
15 with that for a second?

16 THE WITNESS: Sure. Yes.

17 ATTORNEY KOLESK: Okay. Just give me one  
18 minute.

19 THE VIDEOGRAPHER: Going off the record at  
20 8:33 a.m.

21 (RECESS TAKEN.)

22 THE VIDEOGRAPHER: We are back on the  
23 record at 8:36 a.m.

24 BY ATTORNEY KOLESK:

25 Q. And, Mr. Reyes, other than we have

1 discussed, is there any other information you can  
2 provide about your work on Mr. Van Elzen's laptop?

3 A. No, not -- not at that time. No. There  
4 was just like the questions about the browsing history,  
5 and that's it.

6 Q. And have you been contacted by  
7 Mr. Van Elzen since the subpoena was issued?

8 A. No.

9 Q. Have you been contacted -- sorry. Go  
10 ahead.

11 A. I -- sorry. I was thinking to -- when I  
12 saw his name, I was thinking to ask him -- it came to  
13 my mind to call and ask and see what's -- what --  
14 what's going on, but I didn't want to get into -- I  
15 just let it go. I just waited for the date, and I  
16 didn't get in contact with him at all.

17 Q. Okay. And did you have any contact with  
18 any of Mr. Van Elzen's attorneys before this -- before  
19 the deposition today?

20 A. The only way -- the only time I called was  
21 when I was on vacation, in the -- in the Dominican  
22 Republic, because I was waiting for the time to --  
23 for -- for this meeting, and I was waiting there. And  
24 so I didn't get a link or anything, so I called the  
25 number on -- his attorneys, and the attorney said they

1 couldn't give me any information, so they gave me your  
2 guys' information, to call you guys.

3 Q. Okay. And so beyond that one phone call,  
4 there's been no other contact --

5 A. No.

6 Q. -- or emails?

7 A. No contact. No calls. No emails. No,  
8 nothing.

9 Q. Okay.

10 ATTORNEY KOLESK: Well, thank you so much  
11 for your time, Mr. Reyes. I'm happy to report we kept  
12 it to under an hour for you.

13 THE WITNESS: Yeah. Thank you. I  
14 appreciate it. I -- I have a -- an oil change on my  
15 car in like 30 minutes, so yeah.

16 ATTORNEY KOLESK: Well, thank you for your  
17 time.

18 And we can go off the record now if that's  
19 okay.

20 THE WITNESS: Okay. What -- what would be  
21 next, then? Am I going to be called on this again  
22 or...

23 THE REPORTER: We're not off the record  
24 yet.

25 THE VIDEOGRAPHER: We're not off the record

1 yet.

2 This concludes the deposition of Jorge  
3 Reyes on October 30th, 2025, and we're off the video  
4 record at 8:38 a.m.

5 (CONCLUDED AT 8:38 A.M.)

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REPORTER'S CERTIFICATE

I, DANNIELLE COPELAND, RDR, CRR, DO HEREBY CERTIFY THAT THE FOREGOING DEPOSITION OF JORGE REYES WAS TAKEN BEFORE ME AT THE TIME AND PLACE AND FOR THE PURPOSE IN THE CAPTION STATED; THAT THE WITNESS WAS FIRST DULY SWORN TO TELL THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH; THAT THE DEPOSITION WAS TAKEN BEFORE ME STENOGRAPHICALLY AND AFTERWARDS TRANSCRIBED UNDER MY DIRECTION; THAT THE FOREGOING IS A FULL, TRUE, AND CORRECT TRANSCRIPT OF THE SAID DEPOSITION SO GIVEN; THAT THERE WAS A REQUEST THAT THE WITNESS READ AND SIGN THE TRANSCRIPT; THAT THE APPEARANCES WERE AS STATED IN THE CAPTION.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR OF KIN TO ANY OF THE PARTIES TO THIS ACTION, AND AM IN NO WAY INTERESTED IN THE OUTCOME OF SAID ACTION.

WITNESS MY SIGNATURE ON NOVEMBER 5, 2025.

\_\_\_\_\_  
DANNIELLE COPELAND, RDR, CRR  
CALIFORNIA CSR 14444

1 Errata Sheet

2 NAME OF CASE: DAVID VAN ELZEN V. AMERICAN HOME SHIELD

3 DATE OF DEPOSITION: 10/30/2025

4 NAME OF WITNESS: JORGE REYES, PMK

5 Reason Codes: 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

9 From \_\_\_\_\_ to \_\_\_\_\_

10 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

11 From \_\_\_\_\_ to \_\_\_\_\_

12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

15 From \_\_\_\_\_ to \_\_\_\_\_

16 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

17 From \_\_\_\_\_ to \_\_\_\_\_

18 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

22 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

23 From \_\_\_\_\_ to \_\_\_\_\_

24 \_\_\_\_\_

25 JORGE REYES, PMK

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12 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

14 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

15 From \_\_\_\_\_ to \_\_\_\_\_

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17 From \_\_\_\_\_ to \_\_\_\_\_

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19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

22 Page \_\_\_\_\_ Line \_\_\_\_\_ Reason \_\_\_\_\_

23 From \_\_\_\_\_ to \_\_\_\_\_

24 \_\_\_\_\_

25 JORGE REYES, PMK

1 STATE OF \_\_\_\_\_)

2 ) ss.

3 COUNTY OF \_\_\_\_\_)

4

5 I, JORGE REYES, PMK, declare under penalty of  
6 perjury that I have read the foregoing transcript, and  
7 I have made any corrections, additions, or deletions  
8 that I was desirous of making; that the foregoing is a  
9 true and correct transcript of my testimony contained  
10 therein.

11 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
12 20\_\_\_\_\_, at \_\_\_\_\_,  
13 (City) (State) \_\_\_\_\_.

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JORGE REYES, PMK

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<b>Exhibits</b>	<b>4</b>	5:15,16	<b>Appleton</b>	<b>B</b>
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