

Nicholas L. Dazer, OSB #002403

Email: nick@dazerlaw.com

NICHOLAS DAZER PC

12901 SE 97th Avenue, Suite 330

Clackamas, Oregon 97015

Telephone: (503) 953-1043

C. Dunham Biles, TX Bar Number: 24042407 (*pro hac vice*)

Email: dunham@bileswilson.com

BILES WILSON, PLLC

457 Laurence Drive, Ste. 195

Heath, Texas 75032

Telephone: (972) 345-2626

**ATTORNEYS FOR DEFENDANT SKOPOS FINANCIAL, LLC
DBA REPRISE FINANCIAL**

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

CHET WILSON, individually and on behalf
of all others similarly situated,

Case No.: 6:25-cv-00376-MC

Plaintiff,

v.

SKOPOS FINANCIAL, LLC d/b/a REPRISE
FINANCIAL,

Defendant.

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT

NICHOLAS DAZER PC

Nicholas L. Dazer, OSB No. 002403

E-mail: nick@dazerlaw.com

BILES WILSON, PLLC

C. Dunham Biles, TX Bar Number: 24042407 (*pro hac vice*)

E-mail: dunham@bileswilson.com

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CERTIFICATION UNDER LR 7-1(A)

In compliance with Local Rule 7-1(a)(1), counsel for Defendant certifies that he conferred with Plaintiff's counsel regarding this Motion, and Plaintiff is opposed.

I.
PRELIMINARY STATEMENT

Chet Wilson ("Plaintiff" or "Wilson") is a professional Telephone Consumer Protection Act ("TCPA") plaintiff—he has filed approximately seventy such cases over the last year. In this case, Plaintiff is suing over four text messages that were sent to him, but were intended for a loan applicant, Brian, who initiated a loan process with Reprise through Lending Tree and submitted Plaintiff's telephone number rather than his own. Because the text messages were intended to be sent to someone who gave Reprise permission to contact them and because they merely provided information to Brian as to how to finish his loan application process, they do not constitute telephone solicitations as a matter of law and, therefore, are not actionable under the TCPA. Moreover, Plaintiff did not suffer the necessary injury in fact required to assert a TCPA claim. Wilson admits that he knew the messages were not intended for him and that he chose not to respond to any of them with "STOP." Further, Plaintiff is not even sure that he read the text messages outside the scope of pursuing this litigation. Finally, Plaintiff has chosen to keep his telephone number despite receiving dozens of allegedly unwanted text messages daily for six years. It is clear that Plaintiff has done so because of the substantial income that he brags he is receiving for his now approximately seventy TCPA lawsuits. The harassment that Plaintiff alleges to have incurred is simply not real and it is time to put his abusive lawsuit to an end.

II.
FACTUAL AND PROCEDURAL BACKGROUND

A. Plaintiff's Allegations

Plaintiff filed this putative class action lawsuit on March 4, 2025.¹ According to Plaintiff, he registered his telephone number on the National Do No Call Registry “at least 30 days prior to receiving the text message calls at issuing this case.”² Plaintiff further alleges that, thereafter, in November 2024, he received four text messages from Reprise.³ The four text messages state, respectively:

- (1) “Hi Brian, this is Jamie with Reprise Financial. Just a reminder to log in at RepriseFinancial.com to complete your application and review next steps. TXT STOP to Stop messages from this number. MSG & Data rates may apply”;
- (2) “Hi Brian, this is Jamie with Reprise Financial. Just a reminder to log in at RepriseFinancial.com to complete your application and review next steps. TXT STOP to Stop messages from this number. MSG & Data rates may apply”;
- (3) “Hi Brian, this is Julie with Reprise Financial. Just a reminder to log in at RepriseFinancial.com to complete your application and review next steps. TXT STOP to Stop messages from this number. MSG & Data rates may apply”; and
- (4) “Hi Brian, this is Julie with Reprise Financial. Just a reminder to log in at RepriseFinancial.com to complete your application and review next steps. TXT STOP to Stop messages from this number. MSG & Data rates may apply.”⁴

¹ See Class Action Complaint (“Complaint”) [Dkt. No. 1].

² Complaint ¶ 9.

³ Complaint ¶ 15.

⁴ Complaint ¶ 15.

Plaintiff acknowledges that he knew that those text messages were not intended for him, but admits that nonetheless he never: (1) responded with “STOP”; or (2) notified Reprise that it was sending messages to

the wrong person.⁵ Moreover, Plaintiff cannot even say he read any of the four text messages at issue before pursuing this litigation.⁶

Based on the above, Plaintiff asserts a single count for negligent and willful violation of 47 U.S.C. § 227(c)(5).⁷

⁵ See Deposition of Chet Wilson (“Wilson Deposition”) at 20:16-17 (“Q. Did you reply ‘Stop’ to Reprise’s text messages? A. No, sir, I did not.”), attached to Defendant’s Appendix in Support of Defendant’s Motion for Summary Judgment (“App.” at 020); *id.* at 38:4-20 (“... So when you received those text messages you knew they weren’t intended for you, correct? A. Yes, sir. Q. And you didn’t respond ‘Stop,’ correct? A. Like I said, I believed it was click bait. Q. It was yes or no. Did you or did you not respond with ‘Stop’? A. I did not respond with ‘Stop.’ Q. Did you respond saying, Hey, you got the wrong person? A. There was no response.”) (App. 038).

⁶ See *id.* at 55:3-56:12 (“Q. When the text at the top came in, did you even read it? A. I don’t recall if I read the first one or if I noticed after there was several or more than one. Q. Did you read the second text at the time? A. I’ve read -- I’ve read all the texts. Q. I understand that. When that text came in, did you read it? A. I don’t recall if I did directly at that time or not. Q. Did you read the third text, and we’re numbering them from top to bottom, the third text, did you read that when it came in? A. I don’t recall. Q. The fourth text, the bottom text, did you read that when it came in? A. I don’t recall. I just constantly have an inundation of similar messages, so hard to remember if I did at the exact time. Q. And you didn’t respond to any of those, right? A. No, sir. Q. So to the best of your recollection the first time you dealt with these texts, you took an image of it and sent it to your lawyers; is that right? . . . A. I don’t recall. Q. Before sending this to lawyers, how much of your life did this take up? . . . Q. None, right? You didn’t even -- you don’t even remember reading them? A. I don’t remember the time that I read them, but I do remember reading them, yes.”) (App. 055-056).

⁷ See Complaint ¶¶ 30-36.

B. Brian Began The Process Of Applying For A Loan And Authorized Reprise To Contact Him About His Application, But Unfortunately, Brian Used A Telephone Number Which He Believed To Be Fake, But Which Turns Out To Be A Number Plaintiff Purchased.

On November 14, 2024, Brian went to lendingtree.com in an effort to borrow money for purposes of consolidating debt.⁸ In particular, Brian sought to borrow \$30,000 to consolidate his debts.⁹ Brian's intent was to see what he qualified for and whether he liked any of the options.¹⁰

⁸ See Deposition of Brian _____ (Brian's last name and other identifying information is being withheld from this brief and redacted from his deposition transcript pursuant to an agreement of the parties to protect Brian's identity from public disclosure ("Brian Deposition") at 9:25-11:1 ("Q. [Brian] at some point did you go to LendingTree and apply to get a loan? A. I started the process to see what I was eligible for, yes. Q. Okay. And what's your recollection of when you did that? A. I believe that I've tried twice. Late last year, and then earlier this year. Q. Let's start with late last year; do you think that was in November of 2024? A. That sounds about right. Q. And why did you initiate that process with LendingTree? A. I was just looking through a bunch of places online to look for debt consolidation loans, and they were one of the places that popped up in the Google search. Q. And so, you're -- were you attempting to borrow money for purposes of consolidating debt? A. Yes. . . . How did you do this? . . . A. Online. Q. And that was at -- was at LendingTree.com? A. I believe so. I don't remember specifically.") (App. 122-124); *id* at 13:21-15:8 ("Q. [Brian], this will be Exhibit 4. Do you see here that this is -- this says it's a Reprise document at the top left. And then it says application date of November 14, 2024. And the application source lining tree, do you see that? A. Yes. Q. And it lists you as the applicant. You see that? A. Yes. Q. Does that refresh your recollection that you would have done this process on November 14, 2024? A. Yeah, that looks correct. . . . Q. Were you seeking a loan of \$30,000? You'll see it says requested amount. A. Yes.") (App. 126-128); Brian Deposition Exhibit 4 (App. 160); *see also* e-mail from LendingTree to Brian dated November 14, 2024, attached to the Declaration of Jeremy Wilson as Exhibit 1 (App. 163); Brian Deposition 6:22-9:21 (App. 119-122); Brian Deposition Exhibit 1 (App.144-154); Brian Deposition Exhibit 2 (App. 155-156); Brian Deposition Exhibit 3 (App. 157-159).

⁹ See Brian Deposition 15:6-8 ("Q. Were you seeking a loan of \$30,000? You'll see it says requested amount. A. Yes.") (App. 128); *id* at 10:11-19 ("Q. And why did you initiate that process with LendingTree? A. I was just looking through a bunch of places online to look for debt consolidation loans and they were one of the places that popped up in the Google search. Q. And so you're -- were you attempting to borrow money for purposes of consolidating debt? A. Yes.") (App. 123).

¹⁰ See Brian Deposition at 9:25-10:3 ("Q. [Brian] at some point did you go to LendingTree and apply to get a loan? A. I started the process to see what I was eligible for, yes. Q. Okay. And what's your recollection of when you did that? A. I believe that I've tried twice. Late last year,

While on the site, Brian provided personal information in order to obtain what he was looking for—namely, a \$30,000 loan—including his: (1) name; (2) address; (3) e-mail address; (4) date of birth; (5) last four numbers of his social security number; and (6) telephone number.¹¹ With the exception of his telephone number, Brian provided accurate information on the LendingTree site.¹²

Unfortunately, Brian chose to provide LendingTree with what he believed to be a fake (made up) telephone number—namely, (541)999-9999.¹³ Brian provided a “fake” telephone number because he consented to, wanted to receive, and expected to receive, follow-up from LendingTree and its network parties (*e.g.*, Reprise) about his loan possibilities, but Brian only apparently wanted to receive such follow up messages by e-mail rather than by text.¹⁴

and then earlier this year.”) (App. 122-123); *id* at 10:11-19 (“Q. And why did you initiate that process with LendingTree? A. I was just looking through a bunch of places online to look for debt consolidation loans and they were one of the places that popped up in the Google search. Q. And so you're -- were you attempting to borrow money for purposes of consolidating debt? A. Yes.”) (App. 123); *id* at 11:2-8 (“Q. And so you went online and then what happened next, while you're online? A. I went through the site. I just was going through the early processes of seeing if I qualified for anything, and I didn't move very far into the process because I didn't get results back that I was looking for. Q. Did you provide certain personal information about yourself? A. Yes. Q. What's your recollection of what information you provided in that at that time? A. It just would have been the bare minimum information just to get what I was looking for. So, name and email address. Q. Do you recall whether you provided a phone number at that time?”) (App. 124).

¹¹ See Brian Deposition 10:20-15:5 (App. 123-128); Brian Deposition Exhibit 4 (App. 160).

¹² See *supra* n. 11.

¹³ See *supra* n. 11; Brian Deposition at 15:9-16 (“Q. Is it correct your intent was just to come up with the number that was a nobody had? A. Yes. Correct. Q. But you do you understand that in this case Mr. Wilson is alleging that that's his actual phone number? A. I didn't realize that. Q. Okay.”) (App. 128).

¹⁴ See Brian Deposition at 11:17-12:11 (App. 124-125); see *id* at 12:14-18 (App. 125); *id* at 12:22-13:1 (“Q. Why did you enter a number that wasn't yours? A. I didn't want to receive spam calls to my phone number. I was just hoping for email response and it wouldn't let me proceed without entering a phone number.”) (App. 125-126); *id* at 13:2-18 (App. 126); *id* at 15:20-16:24 (“Q. [Brian], do you recognize this screen as one that appeared while you were using LendingTree's website? A. I mean, it looks like something I would have come across. Q. Okay.

C. Plaintiff Is A Professional TCPA Plaintiff Who: (1) Has Filed Approximately Seventy TCPA Cases In The Past Year; (2) Publicly Declared That He Signs Several New TCPA Claims Each Week So His Telephone Number Is Going To Be A Line Of Steady Income For Him; (3) Cannot Say He Read The Texts At Issue Before Pursuing This Lawsuit; (4) Has Given His iCloud Account Password To His Attorneys So That They May Monitor His Text Messages And Prepare New Lawsuits; (5) Chose Not To Reply To Reprise In Regard To The Text Messages At Issue With “Stop”; and (6) Cannot Point To Any Injury He Suffered As A Result Of The Specific Text Messages At Issue.

Plaintiff is a professional TCPA Plaintiff. In the last year (approximately) Plaintiff has filed approximately seventy purported class action TCPA cases.¹⁵ Plaintiff allegedly has settled close to twenty of those cases,¹⁶ but Plaintiff is unable to say how much he has received from those

And it says on the first bullet, ‘I provide my express written consent to receive calls and text messages, including for marketing purposes from LendingTree, LendingTree's network partners, members of LendingTree's extended network, and any authorized third party calling or texting on behalf of LendingTree or its network partners or extended network, including calls and texts made through automated means such as auto dialers, selection systems, and prerecorded or artificial voice recordings. Even if my number is listed on any company, specifically state or federal do not call list.’ Did you see that portion of the first bullet? A. I mean, it's there, but I -- I wouldn't have read it. Q. But you do recall entering your phone number and hitting continue? A. Yes. Q. I'm sorry, let's back up. You do recall entering 541-999-9999 and hitting continue; is that correct? A. Yes. Q. And you wanted to be contacted about your loan possibilities; is that true? A. By email, yes.” (App. 128-129); *id* at 16:22-24 (“Q. And you wanted to be contacted about your loan possibilities; is that true? A. By email, yes.”) (App. 129); Brian Deposition Exhibit 4 (App. 160).

¹⁵ See Wilson Deposition at 6:9-12 (“Q. How many TCPA cases do you have going on? A. I'm not sure which are pending or still active, but there's upwards of somewhere around 70, 69, 70, something like that.”) (App. 006); *id* at 6:21-24 (“Q. When did you first file your TCPA case? A. It was around a year ago, I think. Q. So in a year you've filed approximately 70 TCPA cases as a plaintiff, is that correct?”) (App. 006); *id* at 78:6-7 (“Q. Okay. So in a year you filed 70 lawsuits? A. Roughly.”) (App. 078).

¹⁶ See *id.* at 7:1-11 (“Q. Okay. How many of those have been concluded in one way or another? A. I think somewhere around 20 or so. I don't have the exact number. Q. And were those all concluded by settlement? A. I -- I think there was a few that were dismissed, but yeah, that's -- that's correct. Q. Approximately how many do you believe were settled? A. Some in the 20 area, somewhere -- something like that.”) (App. 007).

settlements.¹⁷ What is undisputed, however, is that other than income from selling off his personal property, Plaintiff's sole source of income is what he receives from settling TCPA cases.¹⁸

Plaintiff has invested time and money into his business of bringing TCPA cases. For example, Plaintiff purchased the telephone number at issue (Plaintiff acquired the telephone

¹⁷ *See id.* at 7:12-22 (“Q. How much did you get paid? . . . Q. Sir, would you answer the question, please? A. Will you repeat it so I get it accurately again? Q. Yeah. How much have you received in settlement cases on TCPA cases? . . . A. I am not certain to an accurate number, so”) (App. 007); *id.* at 72:20-74:3 (“Q. Sir, this is a post you made on your Chet Tank Wilson Facebook account on -- I need my glasses -- on December 10th, 2024, correct? A. Yes, sir. Q. And on that day you said you had ‘36 class action lawsuits so far, and this is my first offer.’ Correct? A. Yes, sir. Q. How much was the offer? A. I don't remember. Q. Did you settle it? A. I don't recall. Q. What case was it? A. I don't recall. Q. You don't remember the very first time you got a settlement offer, you can't tell me what case it was in? A. I don't know. Q. I mean, you're a professional. You have 70 of these. You don't remember which one? A. That's why I don't. . . . Q. Too many to keep track of, right, sir? A. Accurately, yes, without looking at documents. Q. Because as you said right there, ‘I sign several new claims each week so looks like my phone number is gonna be another line of steady income for me,’ exclamation point. Correct, sir? A. That's what I wrote. Q. So these lawsuits including the lawsuit against Reprise under the TCPA are a line of steady income for you, correct, sir? A. Yes, that's what I wrote.”). In addition to his own living expenses, however, Plaintiff must pay \$2600 in rent each month and has six children (three of which live with him). *See id.* at 30:24-31:18 (App. 030-031).

¹⁸ *See id.* 32:20-33:2 (“Q. You also generate income from settling TCPA cases, right? A. If that's considered an income, I guess, yes. Q. Okay. You -- you have money come in to you by selling assets and settling TCPA cases, correct? A. Correct. Q. Anything else? A. No, sir.”) (App. 032-033); *id.* at 29:8-24 (“Q. What if anything is your current job? A. I do not have a current job. I have an online health food, health store. But that's more education than anything else, so I just -- I like sharing stuff with people, it's not about monetary. Q. When is the last time you were employed?” A. I had -- I owned a moving company that I ended up dissolving around 2020. Q. What was the name of the moving company? A. It's called Barter Movers. Q. And how long were you affiliated with Barter Movers? A. I had -- it was about, I'd say about five years. Q. Why did you dissolve it? A. For one, the COVID thing messed up a lot of my work. And multiple injuries, it was hard for me to do that hard of manual labor so I got ride of my equipment.”) (App. 029); *id.* at 29:25-30:8 (“ . . . Q. And are you able to earn any money from that online health store? A. I've say -- maybe made, I've made under a hundred dollars probably for the whole time. . . .”) (App. 029-030); *id.* at 32:3-7 (“Q. Do you have any income besides selling assets? A. No, sir. Q. When is the last time you had an income, other than from selling off assets? A. The moving company.”) (App. 032).

number in exchange for Plaintiff forgiving a \$1000 debt on the purchase of his car and relinquishing title to the owner of the telephone number) in 2018 or 2019.¹⁹

Almost instantly after purchasing the telephone number at issue, Plaintiff claims he began receiving ten to seventy unauthorized solicitations per day.²⁰ Plaintiff asserts that for the past six years he has continued to receive the same volume of unauthorized solicitations.²¹ Yet, Plaintiff did not change his number.²² That decision is not surprising given the economic value Plaintiff

¹⁹ *See id.* 23:9-25:14 (App. 023-025); Wilson Deposition Exhibit 5 (App. 110).

²⁰ *See* Wilson Deposition at 26:6-27:1 (“Q. When -- when did you -- when did you first become concerned that you were receiving text messages that you didn't want to receive? A. Almost instantly. Q. Since you acquired the phone number, approximately how many text messages do you think you receive on a daily basis, that you object to? A. I'd say at the very least ten, so -- Q. So -- go ahead. A. Anywhere from ten to, you know, 50, 60 a day, you know, so it varies. Q. So those ten to 50 to 60 a day, you -- you find to be unauthorized solicitations, is that right? A. That's accurate. Q. So for approximately six years you've been receiving ten to 60 text messages a day that you consider inappropriate solicitations, correct? A. That's accurate. Q. And yet you didn't change your phone number, correct? A. That's correct, for various reasons.”) (App. 026-027); *id.* at 14:19-15:4 (“Q. . . . sir, is it correct that you received something like 50 to 70 texts a day that you consider violations of the TCPA? A. I can't -- . . . A. I can't answer to the exact number. You know, because it varies. It's kind of random. But I'd say I get at least probably 15 to 20 a day and some serious days potentially upward of, you know, 50, 60, 70, you know. But I'd say that's more of a—”) (App. 014-015); *id.* at 65:25-66:10 (“Q. All right. So, and so, but you were saying you're getting 30 to 70 telemarketer calls a day, is that correct? A. I don't recall how accurate that is, but that seems to be the case. Q. You wouldn't post something that was inaccurate, would you? A. No, but it's five years ago, so hard to remember details. Q. How do you know this was five years ago? A. Because it says at the bottom. Five years ago. The screenshot or whatever it is.”) (App. 065-066); Wilson Deposition Exhibit 7 (App. 111).

²¹ *See supra* n. 20.

²² *See id.* at 26:20-27:1 (“Q. So for approximately six years you've been receiving ten to 60 text messages a day that you consider inappropriate solicitations, correct? A. That's accurate. Q. And yet you didn't change your phone number, correct? A. That's correct, for various reasons.”) (App. 026-027).

believes he can garner from his telephone number.²³ For example, Plaintiff once apparently turned down \$20,000 for his telephone number, but posted he was willing to consider higher offers.²⁴ Plaintiff, however, is no longer willing to even consider selling his telephone number.²⁵

Plaintiff's rationale for not being willing to sell his telephone number for \$20,000 or more,²⁶ not responding "STOP" to the text messages at issue,²⁷ and not be willing to change his telephone number,²⁸ despite his protestations of harassment from text messages monitored by his

²³ *See, e.g., id* at 73:23-74:3 ("Q. So these lawsuits including the lawsuit against Reprise under the TCPA are a line of steady income for you, correct, sir? A. Yes, that's what I wrote.") (App. 073-074).

²⁴ *See* Wilson Deposition 45:13-47:19 ("Q. Okay. You did offer to sell your -- your cell phone number, correct? . . . A. Yes, years ago there was a brief period of time I was in correspondence with someone interested in purchasing it. . . . Q. It was on Facebook Marketplace, is that correct? A. Yes, I did -- I did put it on Facebook Marketplace for a period of time. Q. And you said you were willing to accept nothing less than \$20,000, correct? A. I don't -- I'm not sure if that's the wording, but that's -- I was offered 20,000 but it never panned out. . . . Q. Mr. Wilson? You're Chet Wilson; right? A. That is me. Q. And that's your phone number, correct? A. Correct. . . . Q. And you posted this; correct? A. Yes, sir. Q. Okay. And you said it was 'a once in a lifetime opportunity to own the coolest number ever,' right? A. Yes, sir. Q. Would you sell the number today? A. Would I sell it? Q. Yeah. A. Well, at that point I hadn't connected that phone number with as many people, so it didn't have a personal value to me. But no, I -- I wouldn't sell it at this point. I have too many people connected to it.") (App. 045-047); Wilson Deposition Exhibit 5 (App. 110).

²⁵ *See supra* n. 24.

²⁶ *See supra* n. 24.

²⁷ *See supra* n. 5.

²⁸ *See supra* n. 22.

lawyers²⁹ and which he does not know whether he even read before pursuing this action,³⁰ was laid bare by Plaintiff in a post on his Facebook page on December 10, 2024:

Good morning friends...

It's a good day so far & I woke up to the very first settlement offer; one of many from entirely separate companies I'm suing for violations of the TCPA. I have 36 class action lawsuits (so far) and this is my first offer.

I sign several new claims each week so it looks like my phone number is gonna be another line of steady income for me! I'm amazed at how the universe blesses me. My friend called me a magnet the other day. Manifesting is real AF! We are far more powerful than we acknowledge. Our energy we put paves the path in front of us. Only good! Bless you all.³¹

²⁹ See Wilson Deposition Exhibit 9 (“I can help you and maybe my atty would be into taking more cases than what I did is I just gave her tech guy my iCloud and they on top of it. They are going back 5yrs. The biggest thing is keeping al of the voicemails.”) (App. 112); Wilson Deposition 58:2-21 (“A. I don't -- I don't believe that's accurate at all. Q. This is how you make money right, sir? . . . Q. Sir, you want these text messages -- sir, you want these text messages, don't you? . . . Q. You can answer. A. We've -- we've been over this. I absolutely do not want these, as I stated earlier on the record under oath. Q. How did receiving the first text -- well, do you, let's make sure I understand everything you're saying. You're claiming that you're injured because this harassed you, is that correct?”) (App. 058).

³⁰ See *supra* n. 6.

³¹ Wilson Deposition Exhibit 10 (App. 113) (emphasis added); Wilson Deposition 73:20-24 (App. 073). Further, as a plaintiff in seventy TCPA cases, Plaintiff knew that if he texted “STOP” after the first text message he would not have a claim. Further, he hopes to recover more based on each subsequent text message. See Wilson Deposition at 20:3-5 (“Q. So is it correct that you did not respond to those messages at all? A. Yes, that is true.”) (App. 020); Wilson Deposition at 20:16-21:5 (“Q. Did you apply ‘Stop’ to Reprise's text messages? A. No, sir, I did not. Q. And at that point in time how many TCPA lawsuits had you filed? A. Once again, I'm not certain, exact number. Q. Approximately how many? A. Upwards of 70. Q. Okay. Based on your knowledge, how many text messages would it take from Reprise before you could possibly sue them? . . . I'm just asking his – his knowledge based on 70 cases. A. I believe it's more than one.”) (App. 020-021); *id.* 21:21-23 (“Q. And for each text they send you, you think you get more money, right? A. Yes, depending on the terms.”) (App. 021).

It is thus no wonder that Plaintiff views buying a laptop for his TCPA litigation and spending twenty hours a week on such litigation to be an investment.³²

The sole injury Plaintiff claims he suffered as a result of the four text messages at issue is purported harassment.³³ Plaintiff, however, cannot even claim he read the text messages before choosing to pursue litigation much less that those four text messages, as opposed to the other up to seventy improper solicitations he receives daily, specifically caused him to be harassed.³⁴

III. SUMMARY OF ARGUMENT

The Court should grant Plaintiff's summary judgment on Defendant's TCPA claim for at least two reasons.

First, the text messages were not telephone solicitations. The text messages at issue were information text messages sent for the purpose of assisting in the completion of a customer-initiated application process. As such, the text messages at issue are not actionable under the TCPA.

Second, Plaintiff has not suffered an injury in fact necessary to confer Article III standing. The summary judgment evidence shows that Plaintiff was not harmed by receipt of the text messages and, in fact, uses the text message to derive a benefit to obtain lawsuit settlements as his only source of income.

³² See Wilson Deposition 80:5-81:8 (App. 080-081).

³³ See Wilson Deposition at 58:18-59:6 (App. 058-059); *id* at 61:20-62:6 (App. 061-062); *id* at 55:6-56:3 (App. 055-056).

³⁴ See *supra* nn. 6, 29, 33.

In the alternative, the Court should grant Plaintiff partial summary judgment in regard to Plaintiff's request for treble damages as the evidence is clear that, even if a TCPA violation occurred, it was not committed willfully or knowingly by Reprise.

IV.
APPLICABLE LEGAL STANDARDS

A. Summary Judgment

Summary judgment as a matter of law is appropriate when the pleadings and evidence before the Court establish that no genuine issue exists as to any material fact.³⁵ A genuine issue of material fact exists only if upon reviewing the evidence “a reasonable jury could return a verdict for the non-moving party.”³⁶ The movant has the burden of establishing that no genuine issue of fact exists and must inform the Court of the basis of its motion and identify the portions of the record that reveal the absence of genuine material issues of fact.³⁷ If the Movant is able to satisfy its burden, the non-movant is then required to present evidence to the Court establishing a genuine issue of material fact.³⁸ The evidence presented to the Court needs to be sufficient to support a resolution of the factual dispute in the non-movants favor.³⁹ All evidence presented to the Court must be viewed in the light most favorable to the non-movant, but the non-movant must present the Court with more than conclusory allegations and unsubstantiated assertions.⁴⁰

³⁵ FED. R. CIV. P. 56(c).

³⁶ *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

³⁷ *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

³⁸ *See id.* at 323-324.

³⁹ *See Anderson*, 477 U.S. at 249.

⁴⁰ *See id.* at 255.

B. Standing

In order to invoke this Court’s subject matter jurisdiction, Plaintiff must have standing to assert his claim against Reprise.⁴¹ The “irreducible constitutional minimum” of standing consists of three elements: plaintiff “must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.”⁴² “The plaintiff, as the party invoking federal jurisdiction, bears the burden of establishing these elements.”⁴³

The Supreme Court began its analysis in *Spokeo* by reiterating that injury in fact is the “[f]irst and foremost” of the three elements of standing and is “a constitutional requirement” that Congress “cannot erase.”⁴⁴ In other words, Congress cannot create a cause of action for actual harms that exist in the world, it cannot simply create a harm for a Plaintiff whole cloth.⁴⁵ A plaintiff “must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’”⁴⁶ A

⁴¹ *Transunion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (“For there to be a case or controversy under Article III, the plaintiff must have a ‘personal stake’ in the case—in other words, standing.”).

⁴² *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

⁴³ *Id.*

⁴⁴ *Id.* at 338-39.

⁴⁵ *Ramirez*, 594 U.S. at 425-26 (“But even though ‘Congress may ‘elevate’ harms that ‘exist’ in the real world before Congress recognized them to actionable legal status, it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is . . .”).

⁴⁶ *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

plaintiff must prove both particularization and concreteness to establish injury, and “a bare procedural violation, divorced from any concrete harm” is insufficient to “satisfy the injury-in-fact-requirement of Article III.”⁴⁷

The Supreme Court’s standing test also requires a plaintiff to demonstrate that the alleged injury in fact is “fairly traceable” to the defendant’s allegedly wrongful conduct.⁴⁸ In other words, the plaintiff must establish that the injury would not have happened if the defendant had complied with the law.⁴⁹ That means their injuries are not fairly traceable to [the defendant’s] alleged wrongful conduct.”⁵⁰ In other words, if a plaintiff “would have been injured in precisely the same way even if the [defendant] had not engaged in the conduct that he claimed was unlawful,” there can be no “standing because of the failure to trace the injury to the unlawful conduct.”⁵¹

In the TCPA context, the Ninth Circuit Court of Appeals has differentiated *Spokeo* by holding that a plaintiff may assert a cause of action based solely on the receipt of text messages,

⁴⁷ *Id.* at 341.

⁴⁸ *Spokeo*, 578 U.S. at 338.

⁴⁹ *See, e.g., Lujan*, 504 U.S. at 560–61 (1992) (“there must be a causal connection between the injury and the conduct complained of—the injury has to be ‘fairly . . . trace[able] to the challenged action of the defendant’”) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)); *see also St. Louis Heart Ctr., Inc. v. Nomax, Inc.*, 899 F.3d 500, 504 (8th Cir. 2018) (holding that the plaintiff failed to show that its alleged injury was traceable to the defendant’s failure to adhere to a TCPA rule), *cert. denied*, 139 S. Ct. 1198 (2019).

⁵⁰ *Id.*

⁵¹ *Id.* at 1271-72 (further holding “likewise a controversy is not justiciable when a plaintiff independently caused his own injury”) (citing *Swann v. Secretary*, 668 F.3d 1285, 1288 (11th Cir. 2012)).

without alleging additional harm.⁵² The Ninth Circuit “looked to the Restatement of Tort’s discussion of privacy torts and the widespread recognition among states of the right to privacy as evidence of a common-law analog to privacy violations.”⁵³ The Ninth Circuit, therefore, concluded that Congress was simply recognizing harms which have a common law analog resembling traditional claims for invasions of privacy, intrusion upon seclusion, and nuisance.⁵⁴ Common law recognizes that an intrusion upon seclusion occurs when there is an intentional intrusion, physical or otherwise, upon the plaintiff’s solitude or seclusion or private affairs or concerns.⁵⁵ Moreover, in order for an intrusion upon seclusion to have occurred, the intruder had to have reason to know that its actions were not authorized.⁵⁶

C. **“Solicitation” Under The TCPA**

Pursuant to § 227(c)(5) of the TCPA, “a 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*” has a private civil right of action against the entity.⁵⁷ 47 C.F.R. § 64.1200(c) (a regulation prescribed by 47 U.S.C. § 227(c)(5)) provides as follows:

⁵² See *Van Patten v. Vertical Fitness Group, LLC*, 847 F.3d 1037, 1043 (9th Cir. 2017) (“[u]nsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA ‘need not allege any *additional* harm beyond the one Congress identified.’”) (emphasis in original).

⁵³ See *Wakefiled v. Visalus*, 51 F.4th 1109, 1118 (9th Cir. 2022).

⁵⁴ See *id.*

⁵⁵ *Mauri v. Smith*, 929 P.2d 307, 311 (Or. 1996).

⁵⁶ *Smith* at 311 (“By definition, then, an actor commits an intentional intrusion if the actor either desires to cause an unauthorized intrusion or believes that an unauthorized intrusion is substantially certain to result from committing the invasive act in question.”); *O’Donnell v. United States*, 891 F.2d 1079, 1083 (3d Cir. 1989) (“We conclude that an actor commits an intentional intrusion only if he believes, or is substantially certain, that he lacks the necessary legal or personal permission to commit the intrusive act.”).

⁵⁷ See 47 U.S.C. § 227(c)(5) (emphasis added).

No person or entity shall initiate any *telephone solicitation* to:

(2) 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.⁵⁸

The TCPA defines telephone solicitation as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.”⁵⁹ 47 C.F.R. § 64.1200(f)(13) uses the exact same language to define telemarketing.⁶⁰ Thus, “[i]nformational, non-solicitation telephone calls to numbers on the do-not-call registry do not violate the TCPA.”⁶¹ Moreover, the term telephone solicitation “does not include a call or message . . . to any person with that person’s express invitation or permission.”⁶²

Text messages sent directing the recipient towards completing a process or validating personal information do not meet the definition of “telephone solicitation” or “telemarketing.” For example, in *Wick v. Twilio*⁶³ the plaintiff received a text message that stated “Noah, Your order at Crevalor is incomplete and about to expire. Complete your order by visiting

⁵⁸ See 47 C.F.R. § 64.1200(c) (emphasis added).

⁵⁹ See 47 U.S.C. § 227(a)(5).

⁶⁰ (“The term telemarketing means the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.”).

⁶¹ See *Williams-Diggins v. Republic Servs.*, No. 3:18 CV 2313, 2019 WL 5394022, at *2 (N.D. Ohio Apr. 25, 2019) (granting motion to dismiss where complaint “states that the purpose of the calls was to inform, not to solicit business”).

⁶² See 47 U.S.C. § 227(a)(4).

⁶³ No. C16-00914RSL, 2016 WL 6460316, at *1 (W.D. Wash. Nov. 1, 2016).

http://hlth.co/xDoXEZ.”⁶⁴ In discussing whether the text at issue constituted telemarketing,⁶⁵ the court observed that “[t]his fact pattern is analogous to plaintiff receiving a text message and call immediately upon initiating an order process. It is not telemarketing for the service or product provider to inform plaintiff how to complete that process.”⁶⁶ The court, therefore, concluded that the text at issue did not constitute telemarketing.⁶⁷

Similarly, in *Aderhold v. Car2go N.A., LLC*,⁶⁸ plaintiff submitted an on-line registration form for membership in car2go, at which point he then received an email and a text message about how to complete the registration process. The text message stated: “Please enter your car2go activation code 145858 into the emailed link. We look forward to welcoming you to car2go.”⁶⁹ Similarly to Plaintiff’s arguments in this case, the plaintiff in *Aderhold* argued that “because the

⁶⁴ *See id.*

⁶⁵ The FTC definition of telemarketing is essentially identical to the TCPA’s definition of “telephone solicitation.” CFR § 64.1200 (13) defines telemarketing as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person,” whereas, the TCPA defines “telephone solicitation” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.” *See* 47 U.S.C. § 227(a)(4). The only difference is that the TCPA definition goes on to exclude certain categories of calls which are not at issue in this case. *See id.*

⁶⁶ *Id.* at *5.

⁶⁷ The Court discussed the issue of plaintiff’s consent in its ultimate holding because the Court was evaluating an alleged violation of 47 U.S.C. § 227(b) which prohibits calls made with a random number generated automatic dialing system, a cause of action not pleaded in this case. For calls initiated by an such a dialing system, some form of consent is required even for calls that do not constitute telemarketing. *See* CFR § 64.1200 (1)(a) (“(a) No person or entity may: (1) [e]xcept as provided in paragraph (a)(2) of this section, initiate any telephone call (other than a call made for emergency purposes or is made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice.”).

⁶⁸ 668 F. App’x 795, 796 (9th Cir. 2016).

⁶⁹ 2014 WL 794802, at *1.

text directed him to place an activation code into an email that ultimately connected to the car2go website which contains promotions for the car2go service, it was a telemarketing text.”⁷⁰ The court rejected this argument, recognizing that “[t]here is no indication that the text was intended for anything other than the limited purpose stated in its two sentences: to permit Mr. Aderhold to complete registration.”⁷¹ The court, therefore, held that the texts at issue did not constitute telemarketing.⁷²

Finally in *Daniel v. Five Stars Loyalty, Inc.*⁷³ the court evaluated a text message that said “Welcome to Five Stars, the rewards program of Flame Broiler. Reply with your email to finish registering and get free pts! Txt STOP to unsubscribe.”⁷⁴ The court concluded that the plaintiff has “received a confirmatory text as part of the process of registering for Five Stars, not a telemarketing message.”⁷⁵

When evaluating whether the purpose of a text is for the purpose of solicitation, as opposed to providing information, courts should use “a measure of common sense.”⁷⁶

⁷⁰ *Id.* at *9. As in *Wick*, the court in *Aderhold* was evaluating whether the text message at issue constituted telemarketing in the context of the use of an automated dialing system, an issue not alleged in this litigation.

⁷¹ *Id.* at *9.

⁷² The Court also recognized that because the text did not constitute telemarketing, his alleged lack of consent was irrelevant. *See id.* (“The court need not decide if Mr. Aderhold consented to telemarketing texts, it suffices to conclude that the text he received was not telemarketing.”).

⁷³ No. 15-CV-03546-WHO, 2015 WL 7454260, at *1 (N.D. Cal. Nov. 24, 2015).

⁷⁴ *Id.*

⁷⁵ *Id.* at *4.

⁷⁶ *See Aderhold v. car2go N.A. LLC*, 668 F. App'x 795, 796 (9th Cir. 2016) (“We approach the question of the purpose of a message ‘with a measure of common sense.’”).

D. Willful And Knowing Violations Of The TCPA.

If the Court finds that Reprise “willfully or knowingly” violated 47 U.S.C. § 227(c) it may, in its discretion, increase the amount of any award to an amount equal to three times the amount ordinarily available.⁷⁷ In this context, Plaintiff must show that Reprise must have known that the person being called had not given prior express written consent.⁷⁸

**V.
ARGUMENTS AND AUTHORITIES**

A. The Court Should Grant Reprise Summary Judgment Because The Text Messages At Issue Are Not Telephone Solicitations.

Plaintiff relies on 47 C.F.R. § 64.1200(c) which requires showing that Reprise initiated a “telephone solicitation.” Here, however, the summary judgment record demonstrates that the purpose of the challenged text messages was to facilitate the completion of a loan application that was previously begun by another individual, Brian. The undisputed summary judgment evidence shows that: (1) Brian initiated the process of obtaining a \$30,000 loan by visiting the website www.lendingtree.com;⁷⁹ (2) as part of the loan application process, Brian provided several pieces of personal information, including the telephone number that appears to belong to Plaintiff;⁸⁰ and (3) Brian explicitly authorized receipt of communications (including text messages) from lenders

⁷⁷ See 47 U.S.C. § 227(c)(3).

⁷⁸ *Wakefield v. ViSalus, Inc.*, No. 3:15-CV-1857-SI, 2019 WL 2578082, at *2 (D. Or. June 24, 2019) (“For the calls to have been deliberate violations, Plaintiff needed to demonstrate that [Defendant] should have known that [it was] calling a person who did not provide prior express consent.”) (quoting *N.L. by Lemos v. Credit One Bank, N.A.*, No. 2:17-CV-01512-JAM-DB, 2019 WL 1428122, at *1 (E.D. Cal. Mar. 29, 2019)).

⁷⁹ See *supra* nn. 8-14.

⁸⁰ See *supra* n. 11.

(including Reprise).⁸¹

The four text messages themselves further demonstrate that the purpose of the message was to complete an application process previously initiated by Brian:

- (1) “. . . Brian, this is Jamie with Reprise Financial. Just a reminder to log in at repriseFinancial.com to complete your application and review next . . .”;⁸²
- (2) “. . . Brian, this is Jamie with Reprise Financial. Just a reminder to log in at repriseFinancial.com to complete your application and review next . . .”;⁸³
- (3) “. . . BRIAN, this is Julie with Reprise Financial. We received your loan request through LendingTree. Please log in at RepriseFinancial.com to complete . . .”;⁸⁴and
- (4) “. . . BRIAN, this is Julie with Reprise Financial. We received your loan request through LendingTree. Please log in at RepriseFinancial.com to complete . . .”⁸⁵

Because each of the text messages at issue merely seek to complete a consumer transaction that had previously been initiated, the text messages are not “telephone solicitations” as that term is defined in the TCPA.⁸⁶ A telephone solicitation is trying to drum up new business, not trying to reach someone that has already initiated a transaction with the sender.⁸⁷ Reprise’s text messages,

⁸¹ *See supra* n. 14.

⁸² *See* Complaint ¶ 15.

⁸³ *See* Complaint ¶ 15.

⁸⁴ *See* Complaint ¶ 15.

⁸⁵ *See* Complaint ¶ 15.

⁸⁶ *See, e.g., supra*, nn. 57-76. Moreover, because the text messages at issue were not meant for Plaintiff, Reprise’s purpose was not to sell Plaintiff anything.

⁸⁷ *See id.*

therefore, are not telephone solicitations and Reprise's sending them does not constitute a violation of the TCPA.

Moreover, the Court has previously recognized that the messages are facially informational. In connection with the prior motion to dismiss the Court, at the pleading stage (which rendered it inappropriate for Reprise to proffer any facts, including an explanation), noted that "common sense dictates suspicion. It is plausible that the messages, although information on their face, were part of a large marketing scheme."⁸⁸ The factual background, however, is now before the Court and the facts clearly demonstrate that Reprise did not send the challenged text messages as part of a "larger marketing scheme."

Accordingly, Reprise's Motion For Summary Judgment should be granted.

B. The Court Should Grant Reprise Summary Judgment Because Plaintiff Lacks Standing.

Plaintiff has not suffered an injury in fact to give him standing. Although the Ninth Circuit has recognized that receipt of text messages can constitute an injury in fact because it is akin to an intrusion upon privacy or seclusion,⁸⁹ Plaintiff's alleged injury—harassment—bears none of the traditional hallmark of someone suffering such an injury. Plaintiff admits that he makes his primary income from receipt of such text messages and that he has kept his telephone number despite receiving supposedly unwanted text messages for years. On this summary judgment record, it is clear that no intrusion upon his seclusion or privacy took place.

⁸⁸ Opinion and Order p.6 (Dkt. 20).

⁸⁹ *See supra* n. 54.

Moreover, in order to constitute an intrusion upon seclusion, Plaintiff must prove that that Reprise knew or was substantially certain that it did not have Plaintiff's permission to send him text messages.⁹⁰ Based on the above, Plaintiff cannot meet that burden.

Accordingly, Reprise's Motion For Summary Judgment should be granted based on Plaintiff's lack of standing.

C. The Court Should Grant Reprise's Motion For Summary Judgment On Plaintiff's Claim That Reprise Willfully Or Knowingly Violated The TCPA.

In order to seek treble damages in this case, Plaintiff must show that Reprise acted "willfully or knowingly."⁹¹ Here, that means Plaintiff must show that Reprise must have known that the person being called had not given prior express written consent.⁹² The summary judgment evidence, however, demonstrates the exact opposite. Brian provided Reprise (through www.lendingtree.com) with Plaintiff's phone number and consented to being contacted at that telephone number. Reprise, therefore, reasonably believed that it had consent to use Plaintiff's telephone number to reach Brian. Under such circumstances, there is no evidence to warrant a conclusion that Reprise knew that it was contacting Plaintiff without his permission.

Accordingly, Reprise's Motion For Summary Judgment should be granted as to Plaintiff's claim that Reprise willfully or knowingly violated the TCPA.

⁹⁰ See *supra* n. 56.

⁹¹ See 47 U.S.C. § 227(c)(3).

⁹² *Wakefield v. ViSalus, Inc.*, No. 3:15-CV-1857-SI, 2019 WL 2578082, at *2 (D. Or. June 24, 2019) ("For the calls to have been deliberate violations, Plaintiff needed to demonstrate that [Defendant] should have known that [it was] calling a person who did not provide prior express consent.") (quoting *N.L. by Lemos v. Credit One Bank, N.A.*, No. 2:17-CV-01512-JAM-DB, 2019 WL 1428122, at *1 (E.D. Cal. Mar. 29, 2019)).

VI.
CONCLUSION

For all the foregoing reasons, Reprise requests that the Court: (1) grant the Motion, (2) grant Reprise summary judgment on, and dismiss, all of Plaintiff's claims; (3) in the alternative, grant Defendant summary judgment on Plaintiff's claim that Defendant willfully or knowingly violated the TCPA; and (4) grant Reprise all other relief to which it may be entitled.

Dated: January 5, 2026.

NICHOLAS DAZER PC

/s/ Nicholas L. Dazer

Nicholas L. Dazer, OSB No. 002403

E-mail: nick@dazerlaw.com

BILES WILSON, PLLC

C. Dunham Biles, TX Bar Number: 24042407 (*pro hac vice*)

E-mail: dunham@bileswilson.com

**ATTORNEYS FOR DEFENDANT SKOPOS
FINANCIAL, LLC DBA REPRIS FINANCIAL.**

CERTIFICATE OF SERVICE

I hereby certify that on January 5, 2026, the foregoing was submitted *via* the Court's CM/ECF Case Management Electronic Case Filing System which automatically served on all counsel of record in this matter.

By: */s/ C. Dunham Biles*

C. Dunham Biles