

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS**

FILED: **5/4/20**

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| CRAIG CUNNINGHAM, Plaintiff, v. Matrix Financial Services, LLC, National Car Cure, LLC, Zander Collins & Smith, Sing for Service, LLC, dba MEPCO, Wolf Marketing, LLC, Vincent Yates, Jeremy Valentino Defendant | § § § § § § 4:19-cv-00896-ALM-CAN § § § | U.S. DISTRICT COURT EASTERN DISTRICT COURT DAVID A. O'TOOLE, CLERK |
| | | |

Plaintiff's Amended Complaint

Parties

1. The Plaintiff is Craig Cunningham and natural person and was present in Texas for all calls in this case in Collin County.
2. Matrix Financial Services, LLC., is a Texas corporation search that can be served at 815 Brazos Street, ste 500, Austin, Tx 78701
3. National Car Cure, LLC is a Florida corporation that can be served via Reg Agent and corp officer/manager, Zander, Collins, & Smith, LLC 3240 Professional Drive, Auburn, CA 95602 or via registered agent David Glenwinkel at 2120 Carey Ave Ste 300, Cheyenne, WY 82001 or 12760 Luther Road, Auburn, CA 95603.
4. Zander, Collins, & Smith, LLC is a Wyoming Corporation that is operating from 3240 Professional Drive, Auburn, CA 95602 or via registered agent David Gelnwinkel at 2120 Carey Ave Ste 300, Cheyenne, WY 82001 or 12760 Luther Road,

Auburn, CA 95603.

5. David Glenwinkel at 2120 Carey Ave Ste 300, Cheyenne, WY 82001 or 12760 Luther Road, Auburn, CA 95603.
6. Sing for Service, LLC DBA MEPCO is an Illinois Corporation Service Company, 801 Adlai Stevenson Drive, Springfield, IL 62703
7. Wolf Marketing, LLC, is a defunct Florida corporation that can be served via secretary of state or via corporate officer Jeremy Valentino is a natural person who can be served at 3589 Rio Palmoa CT, North Las Vegas, NV 89031 or 99 Allen St., Unit 201, Woonsocket, RI 02895
8. Vincent Yates, is a natural person who can be served at 2601 10th Ave., N. Ste 301 Lakeworth FL 33461 or 208 Flagler St., Clewiston, FL 33440.
9. Data Genie, LLC is a Florida corporation and can be served via secretary of state or via corporate officer Jeremy Valentino is a natural person who can be served at 3589 Rio Palmoa CT, North Las Vegas, NV 89031 or 99 Allen St., Unit 201, Woonsocket, RI 02895
10. Jeremy Valentino is a natural person who can be served at 3589 Rio Palmoa CT, North Las Vegas, NV 89031 or 99 Allen St., Unit 201, Woonsocket, RI 02895.
11. John/Jane Does 1-4 are other liable parties currently unknown to the Plaintiff.

JURISDICTION AND VENUE

12. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff's TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012). This Court has supplemental subject matter jurisdiction over Plaintiff's claim arising under Texas Business and Commerce Code 305.053 because that claim: arises from the same nucleus of operative fact, i.e., Defendants' telemarketing robocalls to Plaintiff; adds little complexity to the case; and doesn't seek money damages, so it is unlikely to predominate over the TCPA claims.

13. **Personal Jurisdiction.** This Court has general personal jurisdiction over the defendant because they have repeatedly placed calls to Texas residents, and derive revenue from Texas residents, and the sell goods and services to Texas residents, including the Plaintiff.
14. This Court has specific personal jurisdiction over the defendants because the calls at issue were sent by or on behalf of the Defendants and involved a Texas based company selling car warranties to Texas based consumers.
15. **Venue.** Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1)-(2) because a substantial part of the events giving rise to the claims—the calls and sale of goods and services directed at Texas residents, including the Plaintiff—occurred in this District and because the Plaintiff resides in this District. residing in the Eastern District of Texas when he recieved a substantial if not every single call from the Defendants that are the subject matter of this lawsuit.
16. This Court has venue over the defendants because the calls at issue were sent by or on behalf of the above named defendants to the Plaintiff a Texas resident.

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991, 47 U.S.C. §
227**

17. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding telemarketing.
18. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” 47 U.S.C. §

227(b)(1)(A)(iii).

19. The TCPA makes it unlawful “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes, is made solely pursuant to the collection of a debt owed to or guaranteed by the United States, or is exempted by rule or order” of the Federal Communication Commission (“FCC”). 47 U.S.C. § 227(b)(1)(B).
20. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(b). 47 U.S.C. § 227(b)(3).
21. Separately, the TCPA bans making telemarketing calls without a do-not-call policy available upon demand. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(1).¹
22. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(c) or a regulation promulgated thereunder. 47 U.S.C. § 227(c)(5).
23. According to findings of the FCC, the agency vested by Congress with authority to issue regulations implementing the TCPA, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls and can be costly and inconvenient.
24. The FCC also recognizes that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).
25. The FCC requires “prior express written consent” for all autodialed or prerecorded

¹ See Code of Federal Regulations, Title 47, Parts 40 to 60, at 425 (2017) (codifying a June 26, 2003 FCC order).

telemarketing robocalls to wireless numbers and residential lines. In particular:[A] consumer's written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received clear and conspicuous disclosure of the consequences of providing the requested consent, *i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition, the written agreement must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.

26. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks omitted). FCC regulations "generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations." *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).
27. The FCC confirmed this principle in 2013, when it explained that "a seller ... may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers." *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 ¶ 1 (2013).
28. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).
29. A corporate officer involved in the telemarketing at issue may be personally liable

under the TCPA. *E.g., Jackson Five Star Catering, Inc. v. Beason*, Case No. 10-10010, 2013 U.S. Dist. LEXIS 159985, at *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.” (internal quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415 – 16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

The Texas Business and Commerce Code 305.053

30. The Texas Business and Commerce code has an analogous portion that is related to the TCPA and was violated in this case.
31. The Plaintiff may seek damages under this Texas law for violations of 47 USC 227 or subchapter A and seek \$500 in statutory damages or \$1500 for willful or knowing damages.

FACTUAL ALLEGATIONS

32. This case relates to an extended car warranty policy issued by the Defendants.

Calls to the Plaintiff

33. Mr. Cunningham received multiple calls from a variety of spoofed caller ID’s that contained a pre-recorded message and were initiated using an automated telephone dialing system. The calls were on behalf of the named defendants. The calls had a delay of 3-4 seconds of dead air before the pre-recorded message began indicating the calls were initiated using an ATDS.
34. These calls were not related to any emergency purpose.

35. The defendants did not have an internal do not call policy, did not place the Plaintiff on an internal do not call policy, in violation of 47 CFR 64.1200(d).

36. Mr. Cunningham has limited data storage capacity on his cellular telephone.

Incoming calls from the defendants consumed part of this capacity.

37. No emergency necessitated the calls

38. Each call was sent by an ATDS.

Calls to the Plaintiff's phone number ending in 1977

39. The first set of calls were to ***-***-1977

40. The calls contained a pre-recorded message and the caller ID was spoofed, and the Plaintiff alleges the following calls below at a minimum:

| | | | 1977 | ERMPx914689 | National Car Cure |
|--------------------|----------------|---------|-------------|--------------------|--------------------------|
| 10/09/2019 | 754-224-0253 | | | | |
| 10/10/2019 | 561-229-1044 | | | | Vmail |
| 10/11/2019 | 561-229-1044 | | | | |
| 10/10/2019 3:11 PM | (561) 229-1044 | inbound | wifi | | |

41. The Plaintiff was emailed a policy with the number **ERMPx914689** and contained the names of the named defendants in the policy book.

42. The second set of calls were to the Plaintiff's cell phone ending in 1812

43. The Plaintiff alleges the following calls to his cell phone which represent at least 140 calls soliciting the Plaintiff for a car warranty. The Plaintiff was emailed a policy **ERMPX924876** as a result of the illegal telemarketing calls listed below.

| | | | | | | |
|------------------|------|----------------|-----|----------|------------------------|-------|
| 8/31/19 6:04 PM | call | (716) 804-2990 | 3s | outbound | Car warranty prerecord | |
| 8/29/19 5:57 PM | call | (716) 804-2990 | 3s | outbound | | |
| 8/27/19 7:29 PM | call | (716) 804-2990 | 6s | outbound | | |
| 9/30/19 6:55 PM | call | (877) 833-1487 | 47s | inbound | | |
| 9/24/19 1:09 PM | call | (214) 501-0277 | | outbound | Car warranty prerecord | |
| 9/11/19 2:03 AM | call | (337) 404-0415 | | outbound | Car warranty prerecord | twice |
| 9/10/19 12:43 AM | call | (615) 281-3501 | | outbound | | |
| 9/6/19 9:08 PM | call | (866) 598-9488 | 16s | outbound | | |

| | | | | | | |
|-------------------|------|----------------|--------|----------|---------------------------------|-------|
| 9/6/19 8:14 PM | call | (254) 400-2434 | 12s | outbound | | |
| 9/6/19 5:53 PM | call | (315) 533-8630 | 22s | inbound | Car warranty prerecord | |
| 9/5/19 6:05 PM | call | (615) 745-3130 | 9m 50s | outbound | | |
| 9/5/19 6:01 PM | call | (615) 745-3130 | 2m 46s | outbound | | |
| 9/5/19 6:00 PM | call | (615) 745-3130 | 28s | outbound | Car warranty prerecord | |
| 9/5/19 5:07 PM | call | (615) 745-3130 | 10s | outbound | | |
| 9/5/19 2:14 PM | call | (214) 275-9479 | 3m | outbound | | |
| 9/5/19 2:14 PM | call | (615) 645-7853 | | outbound | Car warranty prerecord | |
| 9/5/19 2:13 PM | call | (404) 382-6759 | | outbound | | |
| 9/5/19 3:24 AM | call | (404) 382-6759 | | outbound | | |
| 9/5/19 3:23 AM | call | (615) 645-7853 | | outbound | Car warranty prerecord | |
| 9/4/19 11:16 PM | call | (615) 609-2366 | 9s | inbound | Car warranty prerecord | |
| 9/4/19 9:01 PM | call | (615) 645-7853 | 36s | inbound | Car warranty prerecord | |
| 10/23/19 10:02 PM | call | (615) 645-7853 | 1s | outbound | | |
| 10/22/19 2:56 PM | call | (615) 725-6798 | 15s | outbound | Car warranty prerecord | |
| 10/22/19 2:55 PM | call | (615) 725-6798 | 13s | outbound | | |
| 10/21/19 5:41 PM | call | (901) 755-9100 | 9s | outbound | Car warranty prerecord | |
| 10/11/19 7:14 PM | call | (615) 661-6326 | 32s | outbound | Car warranty prerecord | |
| 10/8/19 9:34 PM | call | (615) 725-6779 | 34s | outbound | Car warranty prerecord | twice |
| 10/7/19 4:46 PM | call | (615) 861-8839 | | outbound | Car warranty prerecord | |
| 10/7/19 4:46 PM | call | (615) 861-8839 | | outbound | | |
| 10/4/19 4:05 PM | call | (877) 833-1487 | 35s | outbound | | |
| 10/4/19 3:46 AM | call | (925) 397-4019 | 26s | outbound | | |
| 10/4/19 3:33 AM | call | (925) 397-4019 | 53s | outbound | | |
| 10/4/19 2:48 AM | call | (415) 841-3740 | 47s | outbound | | |
| 10/3/19 3:13 PM | call | (877) 833-1487 | 36s | outbound | | |
| 10/3/19 3:12 PM | call | (423) 651-0220 | 6s | outbound | Car warranty prerecord | twice |
| 10/3/19 3:11 PM | call | (615) 717-8406 | 45s | outbound | | |
| 10/3/19 3:10 PM | call | (877) 833-1487 | 5s | outbound | | |
| 11/28/19 1:22 AM | call | (352) 348-7714 | 58s | outbound | | |
| 11/23/19 8:43 PM | call | (615) 724-4084 | | outbound | | |
| 11/23/19 4:54 AM | call | (201) 716-2593 | 20s | outbound | | |
| 11/19/19 6:19 PM | call | (615) 724-4084 | | outbound | Car warranty prerecord | |
| 11/19/19 5:59 PM | call | (813) 694-9069 | 34s | outbound | | |
| 11/19/19 5:58 PM | call | (813) 694-9069 | 35s | outbound | | |
| 11/19/19 5:57 PM | call | (813) 694-9069 | 8s | outbound | | |
| 11/14/19 9:25 PM | call | (615) 794-4079 | 13s | outbound | | |
| 11/7/19 6:45 PM | call | (931) 644-1371 | 36s | outbound | Car warranty prerecord | |
| 11/7/19 6:44 PM | call | (931) 644-1371 | 24s | outbound | | |
| 11/5/19 4:45 AM | call | (855) 540-1690 | 3s | outbound | | |
| 12/31/19 12:00 AM | | 423-520-4548 | | | Car warranty prerecord | |
| 12/24/19 12:00 AM | | 720-325-8236 | | inbound | Car warranty prerecord | |
| 12/19/19 9:52 PM | call | (202) 851-0243 | 14s | outbound | | |
| 12/13/19 4:12 AM | call | (423) 376-9173 | 7s | outbound | Car warranty prerecord | |
| 12/12/19 11:34 PM | call | (423) 376-9173 | 10s | inbound | Car warranty prerecord vmail | |
| 12/11/19 5:32 PM | call | (629) 262-5047 | 25s | outbound | Car warranty prerecord | |
| 12/11/19 5:32 PM | call | (629) 262-5047 | 41s | outbound | | |
| 12/10/19 7:19 PM | call | (888) 838-9010 | 3s | outbound | | |
| 12/6/19 8:11 PM | call | (629) 219-1185 | 17s | outbound | | |
| 12/6/19 8:09 PM | call | (629) 219-1185 | 6s | outbound | | |

| | | | | | | |
|------------------|------|----------------|-----|----------|---------------------------------|-------|
| 12/6/19 6:39 PM | call | (888) 838-7914 | 3s | outbound | | |
| 1/29/20 12:00 AM | | 615-783-5117 | | | Car warranty prerecord | 2x |
| 1/29/20 12:00 AM | | 615-724-4039 | | | Car warranty prerecord | 2x |
| 1/29/20 12:00 AM | | 615-722-1621 | | | Car warranty prerecord | 3x |
| 1/28/20 5:51 PM | call | (980) 284-7009 | 23s | inbound | Car warranty prerecord | |
| 1/27/20 12:00 AM | | 615-723-5195 | | | Car warranty prerecord | 2x |
| 1/24/20 12:00 AM | | 615-794-6239 | | | Car warranty prerecord | 4x |
| 1/23/20 11:39 PM | call | (615) 724-4084 | | outbound | Car warranty prerecord | 2x |
| 1/23/20 11:38 PM | call | (651) 336-9918 | 43s | outbound | Car warranty prerecord | 4x |
| 1/23/20 12:00 AM | | 404-622-5000 | | | Car warranty prerecord | |
| 1/17/20 4:45 PM | call | (813) 681-6411 | 10s | outbound | | |
| 1/10/20 12:00 AM | | 615-725-5195 | | | Car warranty prerecord | |
| 1/4/20 12:00 AM | | 720-325-8236 | | | Car warranty prerecord | |
| 1/8/20 6:17 PM | call | (580) 234-3467 | 17s | outbound | | |
| 1/8/20 6:16 PM | call | (404) 622-5000 | 18s | outbound | Car warranty prerecord | twice |
| 1/8/20 5:33 PM | call | (580) 234-3467 | 35s | inbound | Car warranty prerecord vmail | |
| 1/7/20 7:09 AM | call | (720) 325-8236 | 17s | outbound | | |
| 1/4/20 12:00 AM | | 720-325-8236 | | | Car warranty prerecord | |
| | | | | | | |
| 2/28/20 7:25 PM | call | (615) 655-8708 | 10s | inbound | | |
| 2/27/20 9:21 AM | call | (732) 261-6800 | 5s | outbound | | |
| 2/27/20 9:19 AM | call | (731) 238-9176 | 29s | outbound | | |
| 2/26/20 4:06 PM | call | (732) 261-6800 | 12s | inbound | Car warranty prerecord vmail | |
| 2/25/20 8:57 PM | call | (423) 621-5892 | 10s | inbound | | |
| 2/20/20 10:25 PM | call | (580) 234-3467 | 13s | outbound | | |
| 2/20/20 10:24 PM | call | (651) 336-9918 | 25s | outbound | | |
| 2/20/20 10:24 PM | call | (615) 723-5195 | | outbound | | |
| 2/20/20 10:24 PM | call | (615) 783-5117 | 9s | outbound | | |
| 2/20/20 10:24 PM | call | (980) 284-7009 | | outbound | | |
| 2/20/20 10:23 PM | call | (980) 284-7009 | | outbound | | |
| 2/20/20 10:23 PM | call | (615) 783-5117 | 9s | outbound | | |
| 2/20/20 10:23 PM | call | (615) 722-1621 | | outbound | | |
| 2/20/20 10:22 PM | call | (615) 724-4039 | 7s | outbound | Car warranty prerecord | |
| 2/20/20 10:22 PM | call | (315) 692-2316 | 3s | outbound | | |
| 2/20/20 10:21 PM | call | (833) 984-2098 | 30s | outbound | | |
| 2/20/20 10:21 PM | call | (615) 724-4084 | 1s | outbound | | |
| 2/20/20 10:20 PM | call | (615) 750-2639 | | outbound | Car warranty prerecord | |
| 2/20/20 10:19 PM | call | (615) 720-2628 | 35s | outbound | Car warranty prerecord | 3x |
| 2/20/20 10:18 PM | call | (931) 202-9694 | 9s | outbound | | |
| 2/20/20 10:17 PM | call | (731) 238-9176 | 10s | outbound | | |
| 2/20/20 10:17 PM | call | (615) 721-2929 | 5s | outbound | | |
| 2/19/20 5:38 PM | call | (615) 655-8710 | 9s | outbound | | |
| 2/19/20 12:23 AM | call | (615) 721-2929 | 5s | outbound | | |
| 2/18/20 5:35 PM | call | (615) 721-2929 | 19s | inbound | | |
| 2/17/20 8:38 PM | call | (901) 617-1943 | 10s | inbound | | |
| 2/17/20 3:44 PM | call | (615) 721-2929 | 37s | inbound | Car warranty prerecord vmail | |
| 2/12/20 7:55 PM | call | (931) 202-9694 | 32s | outbound | Car warranty prerecord | |
| 2/12/20 7:50 PM | call | (931) 202-9694 | 51s | outbound | | |

| | | | | | | |
|------------------|------|----------------|---------|----------|---------------------------------|----|
| 2/12/20 7:50 PM | call | (931) 202-9694 | 20s | outbound | | |
| 2/5/20 3:48 AM | call | (615) 724-4084 | 1s | outbound | Car warranty prerecord vmail | 6x |
| 2/4/20 3:34 AM | call | (615) 750-2628 | | outbound | Car warranty prerecord | |
| 2/3/20 8:46 PM | call | (615) 724-4084 | 37s | inbound | Car warranty prerecord vmail | |
| 3/27/20 9:54 PM | call | (615) 558-9965 | 34s | inbound | Car warranty prerecord vmail | |
| 3/27/20 4:19 PM | call | (615) 229-3073 | 19s | inbound | | |
| 3/27/20 2:03 PM | call | (423) 456-3014 | 19s | inbound | | |
| 3/26/20 9:27 PM | call | (629) 209-5070 | 19s | inbound | | |
| 3/26/20 3:11 PM | call | (901) 231-2543 | 19s | inbound | | |
| 3/25/20 9:17 PM | call | (629) 225-1136 | 19s | inbound | | |
| 3/25/20 7:40 PM | call | (615) 229-3963 | 19s | inbound | | |
| 3/20/20 4:00 AM | call | (440) 796-2817 | 26s | outbound | | |
| 3/20/20 4:00 AM | call | (615) 718-2179 | 19s | outbound | Car warranty prerecord | |
| 3/16/20 7:21 PM | call | (615) 893-4480 | 8s | inbound | Car warranty prerecord | |
| 3/13/20 1:49 AM | call | (732) 261-6800 | 5s | outbound | | |
| 3/11/20 11:33 PM | call | (615) 867-8020 | 1m 48s | inbound | Car warranty prerecord | |
| 3/6/20 3:01 AM | call | (971) 220-3701 | 11s | outbound | | |
| 3/5/20 5:20 PM | call | (561) 708-6154 | 8s | outbound | | |
| 3/4/20 11:17 PM | call | (352) 404-3199 | | outbound | | |
| 3/3/20 11:55 PM | call | (615) 725-2139 | 6s | outbound | | |
| 3/2/20 6:51 PM | call | (732) 261-6800 | 5s | outbound | Car warranty prerecord | |
| 4/7/20 10:53 AM | | 423-520-4548 | 16m 56s | inbound | Car warranty prerecord | |
| 4/10/20 12:00 AM | | 615-725-3254 | | | | |
| 4/13/20 12:00 AM | | 919-825-3914 | | | | |
| 4/13/20 12:00 AM | | 704-642-5979 | | | | |
| 4/16/20 12:00 AM | | 865-217-0695 | | | | |
| 4/22/20 12:00 AM | | 615-392-3009 | | | | |
| 4/29/20 12:00 AM | | 423-621-5337 | | | | |

44. The Plaintiff bought a policy on April 7th 2020 related to the calls coming to his cell phone ending in 1812.

45. The Plaintiff's credit card was charged by a familiar party to the action National Car Cure, LLC (Ex A See credit card charge) and contained the same identical parties Matrix, and Sing For Service, indicating that despite being on notice that the Plaintiff didn't want to receive unsolicited telemarketing calls and that National Car Cure was engaged in illegal telemarketing efforts by being served with a copy of the original complaint, both Matrix and Sing For Service continued to do business with

Defendants Matrix and National Car Cure.

46. Given that the calls to the phone number ending in 1812 happened after the filing of this lawsuit, all of the defendants were on notice that the Plaintiff didn't want to receive telemarketing calls and knew that National Car Cure was engaging in illegal robocalls in order to generate business on behalf of Sing For Service, and Matrix.
47. Furthermore both contracts the policy documents indicated that the Plaintiff was being entered into a contract for a payment plan involving Sing for Service, LLC, dba MEPCO and gave MEPCO credit card authorization to charge the Plaintiff's card.
48. The warranty policy (Ex B , page F1) indicated that it was seeking to bind the Plaintiff with Sing For Service, LLC into payment plan agreement relating to a service contract (Extended car warranty) from the seller (National Car Cure) that is issued by the administrator (Matrix Financial).
49. Plateau Casualty Insurance Company is an obligor and is a vicariously liable party as according to the service contract, Matrix Financial is insured by an insurance policy issued by Plateau Casualty Insurance Company for performance under the contract and Plateau Casualty was paid as a result of Defendant Matrix gaining the Plaintiff as a customer through illegal robocalls.
50. Defendant Zander, Collins, and Smith, LLC is the managing entity for National Car Cure and directed National Car Cure to make illegal telemarketing calls at all times relevant to the complaint. Each of the alleged calls was at the direction and control of Zander, Collins, and Smith and as such, Defendant Zander is a liable party.

Liability of Defendant MEPCO

51. Defendant MEPCO is a vicariously liable party as they knew that Matrix and

National Car cure were engaged in illegal telemarketing based on the Plaintiff's original complaint, served on February 20, 2020 and despite this notice, MEPCO did not sever business ties with these companies and continued to ratify the conduct by continuing to accept customers generated from Defendant Matrix and Defendant National Car Cure.

52. Defendant MEPCO is liable under the concept of actual authority as they have a contract with Defendant Matrix and National Car Cure to generate customers for Defendant MEPCO through illegal telemarketing.

**Gus Renny, William Finneran, and National Car Cure's Defendant's Knowing
and Willful Violations of Telemarketing Regulations**

53. Mr. Cunningham asked for an internal do-not-call policy from the defendants, but none was provided.
54. **Gus Renny, William Finneran, and National Car Cure** directed and contracted with Wolf Marketing to place illegal telemarketing calls to the Plaintiff's cell phones in order to generate leads and sales to National Car Cure in order to sell vehicle service contracts issued by Defendant Matrix.
55. **Gus Renny, William Finneran and National Car Cure** knowingly violated the TCPA by initiating automated calls with pre-recorded messages to the Plaintiff, as they were previously sued in Federal court for violating the TCPA.
56. **Gus Renny, William Finneran and National Car Cure** did not have a written do-not-call policy while it was sending Mr. Cunningham text messages.
57. **Gus Renny, William Finneran and National Car Cure** did not train its agents engaged in telemarketing on the existence and use of any do-not-call list.

58. **Gus Renny, William Finneran and National Car Cure** calls did not provide Mr.

Cunningham with the name of the individual caller or the name of the person or entity on whose behalf the call was being made.

Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy Valentino's Defendant's Knowing and Willful Violations of Telemarketing Regulations

59. Mr. Cunningham asked for an internal do-not-call policy from these defendants, but none was provided.

60. **Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy**

Valentino initiated the illegal calls to the Plaintiff's phone numbers in this case in order to generate leads and sales to National Car Cure in order to sell vehicle service contracts issued by Defendant Matrix.

61. Jeremy and Vincent direct their corporations Wolf Marketing and Genie Marketing to make robocalls on behalf of Matrix and National Car Cure, LLC and use the corporations interchangeably as alter egos of each other.

62. **Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy**

Valentino knowingly violated the TCPA by initiating automated calls with pre-recorded messages to the Plaintiff as they used a purpose built dialing platform to place illegal calls designed to avoid detection.

63. **Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy**

Valentino did not have a written do-not-call policy while it was sending Mr. Cunningham text messages.

64. **Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy**

Valentino did not train its agents engaged in telemarketing on the existence and use

of any do-not-call list.

65. Wolf Marketing, LLC, Genie Marketing, LLC, Vincent Yates', Jeremy

Valentino calls did not provide Mr. Cunningham with the name of the individual caller or the name of the person or entity on whose behalf the call was being made.

The Plaintiff's cell phone is a residential number

66. The calls were to the Plaintiff's cellular phones ending in 1977 and 1812 which is the Plaintiff's personal cell phone that he uses for personal, family, and household use.

The Plaintiff maintains no landline phones at his residence and has not done so for at least 10 years and primarily relies on cellular phones to communicate with friends and family. The Plaintiff also uses his cell phone for navigation purposes, sending and receiving emails, timing food when cooking, and sending and receiving text messages. The Plaintiff further has his cell phone registered in his personal name, pays the cell phone from his personal accounts, and the phone is not primarily used for any business purpose.

**INJURY, HARM, DAMAGES, and ACTUAL DAMAGES AS A RESULT OF THE
CALLS**

67. Defendant's calls harmed the Plaintiff by causing the very harm that Congress sought to prevent—a "nuisance and invasion of privacy."

68. Defendant's calls harmed the Plaintiff by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone by placing unwanted telemarketing calls to the Plaintiff.

69. Defendant's calls harmed the Plaintiff by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone line by placing

unwanted telemarketing calls to the Plaintiff.

70. Defendant's calls harmed the Plaintiff by intruding upon Plaintiff's seclusion.

71. The Plaintiff has been harmed, injured, and damages by the calls including, but not limited to:

- Reduced Device Storage space
- Reduced data plan usage
- Invasion of privacy
- Lost time tending to text messages
- Decreased cell phone battery life
- More frequent charging of my cell phone resulting in reduced enjoyment and usage of my cell phone
- Reduced battery usage
- Annoyance
- Frustration
- Anger

Violations of the Texas Business and Commerce Code 305.053

72. The actions of the defendants violated the Texas Business and Commerce Code 305.053 by placing automated calls to a cell phone which violate 47 USC 227(b). The calls by the Defendants and her corporation violated Texas law by placing calls with a pre-recorded message to a cell phone which violate 47 USC 227(c)(5) and 47 USC 227(d) and 47 USC 227(d)(3) and 47 USC 227(e).

73. The calls by the defendants violated Texas law by spoofing the caller ID's per 47

USC 227(e) which in turn violates the Texas statute.

I. FIRST CLAIM FOR RELIEF

(Non-Emergency Robocalls to Cellular Telephones, 47 U.S.C. § 227(b)(1)(A))

(Against All Defendants)

1. Mr. Cunningham realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

2. The foregoing acts and omissions of Defendants and/or their affiliates or agents constitute multiple violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), by making non-emergency telemarketing robocalls to Mr. Cunningham's cellular telephone number without his prior express written consent.

3. Mr. Cunningham is entitled to an award of at least \$500 in damages for each such violation. 47 U.S.C. § 227(b)(3)(B).

4. Mr. Cunningham is entitled to an award of up to \$1,500 in damages for each such knowing or willful violation. 47 U.S.C. § 227(b)(3).

5. Mr. Cunningham also seeks a permanent injunction prohibiting Defendants and their affiliates and agents from making non-emergency telemarketing robocalls to cellular telephone numbers without the prior express written consent of the called party.

II. SECOND CLAIM FOR RELIEF

(Telemarketing Without Mandated Safeguards, 47 C.F.R. § 64.1200(d))

(Against All Defendants)

6. Mr. Cunningham realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

7. The foregoing acts and omissions of Defendants and/or their affiliates or agents constitute multiple violations of FCC regulations by making telemarketing solicitations despite lacking:

a. a written policy, available upon demand, for maintaining a do-not-call list, in violation of 47 C.F.R. § 64.1200(d)(1);²

b. training for the individuals involved in the telemarketing on the existence of and use of a do-not-call list, in violation of 47 C.F.R. § 64.1200(d)(2);³ and,

c. in the solicitations, the name of the individual caller and the name of the person or entity on whose behalf the call is being made, in violation of 47 C.F.R. § 64.1200(d)(4).⁴

8. Mr. Cunningham is entitled to an award of at least \$500 in damages for each such violation. 47 U.S.C. § 227(c)(5)(B).

9. Mr. Cunningham is entitled to an award of up to \$1,500 in damages for each such knowing or willful violation. 47 U.S.C. § 227(c)(5).

² See *id.* at 425 (codifying a June 26, 2003 FCC order).

³ See *id.* at 425 (codifying a June 26, 2003 FCC order).

⁴ See *id.* at 425 – 26 (codifying a June 26, 2003 FCC order).

10. Mr. Cunningham also seeks a permanent injunction prohibiting Defendants and their affiliates and agents from making telemarketing solicitations until and unless they (1) implement a do-not-call list and training thereon and (2) include the name of the individual caller and Defendant's name in the solicitations.

III. THIRD CLAIM FOR RELIEF: Violations of The Texas Business and Commerce Code 305.053

11. Mr. Cunningham realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

12. The foregoing acts and omissions of Defendants and/or their affiliates or agents constitute multiple violations of the **Texas Business and Commerce Code 305.053**, by making non-emergency telemarketing robocalls to Mr. Cunningham's cellular telephone number without his prior express written consent in violation of 47 USC 227 et seq. The Defendants violated 47 USC 227(d) and 47 USC 227(d)(3) and 47 USC 227(e) by using an ATDS that does not comply with the technical and procedural standards under this subsection.

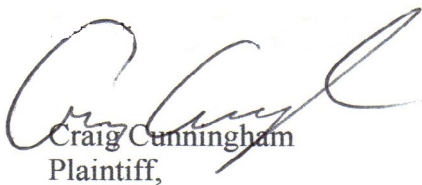
13. Mr. Cunningham is entitled to an award of at least \$500 in damages for each such violation. **Texas Business and Commerce Code 305.053(b)**

14. Mr. Cunningham is entitled to an award of up to \$1,500 in damages for each such knowing or willful violation. **Texas Business and Commerce Code 305.053(c)**.

IV. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig Cunningham prays for judgment against Defendants jointly and severally as follows:

- A. Leave to amend this Complaint to name additional DOESs as they are identified and to conform to the evidence presented at trial;
- B. A declaration that actions complained of herein by Defendants violate the TCPA and Texas state law;
- C. An injunction enjoining Defendants and their affiliates and agents from engaging in the unlawful conduct set forth herein;
- D. An award of \$3000 per call in statutory damages arising from the TCPA intentional violations jointly and severally against the corporation and individual for 30 calls.
- E. An award of \$1,500 in statutory damages arising from violations of the Texas Business and Commerce code 305.053
- F. An award to Mr. Cunningham of damages, as allowed by law under the TCPA;
- G. An award to Mr. Cunningham of interest, costs and attorneys' fees, as allowed by law and equity
- H. Such further relief as the Court deems necessary, just, and proper.


Craig Cunningham
Plaintiff,

5/4/2020


Craig Cunningham, Plaintiff, Pro-se 3000 Custer Road, ste 270-206, Plano, Tx 75075

**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS**

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| <p>CRAIG CUNNINGHAM, Plaintiff,</p> <p>v.</p> <p>Matrix Financial Services, LLC, National Car Cure, LLC, Zander Collins & Smith, Sing for Service, LLC, dba MEPCO, Wolf Marketing, LLC, Vincent Yates, Jeremy Valentino</p> <p>Defendant</p> | <p>§ § § § § § 4:19-cv-00896-ALM-CAN § § §</p> |
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Plaintiff's Certificate of Service

1. I certify a true copy of the foregoing was mailed to the defendants in this case.


Craig Cunningham
Plaintiff,

5/4/2020

Craig Cunningham, Plaintiff, Pro-se 3000 Custer Road, ste 270-206, Plano, Tx 75075