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11 **IN THE UNITED STATES DISTRICT COURT**  
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **LUCAS AMBREZEWICZ ,**  
14 **EDWARD TIMMONS, and MARK**  
15 **HAIGLER**, individually and on behalf  
of all others similarly situated,

16 *Plaintiffs,*

17  
18 v.

19 **GDFRIEND, INC.**, a California  
20 corporation, **dba Direct Home Energy**  
21 **Solutions dba Green Home**  
22 **Investment Program dba Powerstar**  
**Home Energy Solutions,**

23 *Defendant.*  
24

CASE No. '17CV2234 L JMA

**CLASS ACTION**  
**COMPLAINT**

**JURY TRIAL DEMANDED**

25  
26 ///  
27  
28

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

1  
2 Plaintiff Lucas Ambrezewicz (“Plaintiff Ambrezewicz” or “Ambrezewicz”),  
3 Plaintiff Edward Timmons (“Plaintiff Timmons” or “Timmons”) and Plaintiff Mark  
4 Haigler (“Plaintiff Haigler” or “Haigler”) bring this Class Action Complaint and  
5 Demand for Jury Trial (“Complaint”) against Defendant GDFriend, Inc. dba Direct  
6 Home Energy Solutions dba Green Home Investment Program dba PowerStar  
7 Home Energy Solutions (“Defendant” or “GDFriend”) to stop Defendant’s practice  
8  
9 of making unsolicited autodialed telephone calls to the cellular telephones of  
10 consumers nationwide and to obtain redress, including injunctive relief, for all  
11 persons injured by its conduct - including those on the federal Do Not Call  
12 Registry. Plaintiffs, for their Complaint, allege as follows upon personal knowledge  
13 as to themselves and their own acts and experiences, and, as to all other matters,  
14 upon information and belief, including investigation conducted by their attorneys.  
15  
16  
17

**NATURE OF THE ACTION**

18  
19 1. Defendant GDFriend provides consumers with energy efficient home  
20 improvement products. Such products include doors and windows, vinyl siding, air  
21 conditioning units and bathtubs.  
22

23 2. Unfortunately for consumers, Defendant casts its marketing net too  
24 wide. That is, in an attempt to promote its business and services in the energy-  
25 efficiency and home-improvement industry, Defendant conducted (and continues to  
26 conduct) a wide-scale telemarketing campaign that features the making of repeated  
27  
28

1 unsolicited autodialed telephone calls to consumers’ cellular telephones, including  
2 those that appear on the National Do Not Call Registry, without consent -- all in  
3 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the  
4 “TCPA”).  
5

6 3. By making the autodialed telephone calls at issue in this Complaint,  
7 Defendant caused Plaintiffs and the members of the Classes actual harm and  
8 cognizable legal injury. This includes the aggravation, annoyance, and nuisance and  
9 invasions of privacy that result from the receipt of such calls in addition to a loss of  
10 value realized for the monies consumers paid to their wireless carriers for the  
11 receipt of such calls. Furthermore, the calls interfered with Plaintiffs’ and the other  
12 Class members’ use and enjoyment of their cellular telephones, including the  
13 related data, software, and hardware components. Defendant also caused substantial  
14 injury to their phones by causing wear and tear on their property, consuming battery  
15 life, and appropriating cellular data and minutes.  
16  
17  
18

19 4. The TCPA was enacted to protect consumers from unsolicited  
20 telephone calls like those alleged in this case. In response to Defendant’s unlawful  
21 conduct, Plaintiffs file the instant lawsuit and seek an injunction requiring  
22 Defendant to cease all unsolicited telephone calling activities to consumers as  
23 complained of herein and an award of statutory damages to the members of the  
24 Classes under the TCPA, together with costs and reasonable attorneys’ fees.  
25  
26  
27

28 **PARTIES**

1           5.     Plaintiff Ambrezewicz is a natural person and a citizen of the State of  
2 California, residing in the City of Colton.

3           6.     Plaintiff Timmons is a natural person and a citizen of the State of  
4 California, residing in the City of Yucaipa.  
5

6           7.     Plaintiff Haigler is a natural person and a citizen of the State of  
7 California, residing in the City of San Diego.  
8

9           8.     Defendant GDFriend is a corporation organized and existing under the  
10 laws of the State of California with headquarters located at 14252 Culver Dr., Ste.  
11 A213, Irvine, CA 92604.<sup>1</sup>  
12

13   **JURISDICTION AND VENUE**

14           9.     This Court has federal subject matter jurisdiction under 28 U.S.C. §  
15 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C.  
16 § 227 *et seq.*, which is a federal statute.  
17

18           10.    The Court has personal jurisdiction over Defendant because it solicits  
19 significant business in this District, has entered into business to business contracts  
20 in this District, the calls at issue were directed to and received in this District, and  
21 the unlawful conduct alleged in this Complaint occurred in and/or was directed to  
22 this District.  
23  
24

25           11.    Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)  
26 because Defendant does business in this District and the causes of action arose, in  
27

28           <sup>1</sup> California corporate number C2565500.



1 substantial part, in this District. Venue is additionally proper as Plaintiff Haigler  
2 resides in this District.

3 **COMMON FACTUAL ALLEGATIONS**

4  
5 12. As discussed *supra*, Defendant provides consumers with energy-  
6 efficient home improvement products.

7  
8 13. As explained by the Federal Communications Commission (“FCC”) in  
9 its 2012 order, the TCPA requires “*prior express written consent* for all autodialed  
10 or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the*  
11 *Matter of Rules and Regulations Implementing the Telephone Consumer Protection*  
12 *Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

13  
14 14. Yet in violation of this rule, Defendant fails to obtain any prior express  
15 written consent to make these autodialed calls to cellular telephone numbers.

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

- 19
- 20 • Called my DNC home line. No message. Blocked the number.<sup>2</sup>
  - 21 • Called tried to sell energy upgrades. Told him not interested please  
22 take me of call list. Stated he did not have list I should change my  
23 number. Told him what he could do and I hung up. He called back  
used a swear word at me and hung up!<sup>3</sup>
  - 24 • Same thing happened to me! After I told him to take us off the list he  
25 said he didn’t have a list and I said thanks stop calling bye and he

26  
27 <sup>2</sup> <http://800notes.com/Phone.aspx/1-949-728-5353>.

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

1 called back and said he will call who he damn well pleases. Wow!<sup>4</sup>

- 2 • Interesting addition I have been getting so many calls from this number
- 3 that I decided to even entertain what ever they were trying to sell. First
- 4 they keep asking for Jerome. My name is Mike. I said yes this is him
- 5 I am interested and guy just hung up lol. So they don't even want to
- 6 sell anything. What is the angle here??<sup>5</sup>
- 7 • NO TALK, TWICE IN ABOUT A MINUTE THEY CALLED<sup>6</sup>
- 8 • Both my home and my mobile phone are on the DNC list, but I
- 9 continue to get repeated telemarketing calls from this business. They
- 10 claim they were asked to call me by the Green Home Investment
- 11 Program ... I asked what the company was. He said Direct Home
- 12 Energy Solutions and that they were being asked to call people b the
- 13 Green Home Investment Program ...<sup>7</sup>
- 14 • Called my cell, and I don't answer if I don't recognize the number.<sup>8</sup>

15 16. In placing the calls that form the basis of this Complaint, Defendant  
 16 utilized an automatic telephone dialing system ("ATDS") in violation of the TCPA.  
 17 Specifically, the hardware and software used by Defendant has the capacity to  
 18 generate and store random numbers, and/or receive and store lists of telephone  
 19 numbers, and to dial such numbers, *en masse*, in an automated fashion without  
 20 human intervention. Defendant's automated dialing equipment also is, or includes  
 21 features substantially similar to, a predictive dialer, meaning that it is capable of  
 22 making numerous phone calls simultaneously and automatically connecting  
 23

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

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

26 <sup>6</sup> <http://whocallsme.com/Phone-Number.aspx/9497285353>.

27 <sup>7</sup> <https://www.yelp.com/biz/direct-home-energy-solutions-santa-ana>

28 <sup>8</sup> <http://800notes.com/Phone.aspx/1-949-728-5353>.

1 answered calls to then available callers and disconnecting the rest (all without  
2 human intervention).

3 17. Furthermore, Defendant calls customers who have no “established  
4 business relationship” with Defendant and who are registered on the Do Not Call  
5 Registry.  
6

7 18. When placing these calls to consumers, Defendant failed to obtain  
8 prior express written consent as required by the TCPA from cellular telephone  
9 owners/users to make such calls.  
10

11 19. Finally, even when consumers try to opt out of future calls by  
12 requesting to never be called again, Defendant continues to call them.  
13

14 20. Defendant knowingly made (and continues to make) telemarketing  
15 calls without the prior express written consent of the call recipients and knowingly  
16 continues to call them after requests to stop. As such, Defendant not only invaded  
17 the personal privacy of Plaintiffs and other members of the putative Classes but also  
18 intentionally and repeatedly violated the TCPA.  
19  
20

21 21. To hide its true identity when placing unwanted autodialed solicitation  
22 calls, Defendant uses a variety of trade names in connection with a variety of  
23 websites. For example, Defendant uses the trade names 1.) Direct Home Energy  
24 Solutions; 2.) Green Home Investment Program; and 3) Powerstar Home Energy  
25 Solutions--and Defendant owns and/or operates their websites. As shown below,  
26 each of these trade names are connected to Defendant via nearly identical websites  
27  
28

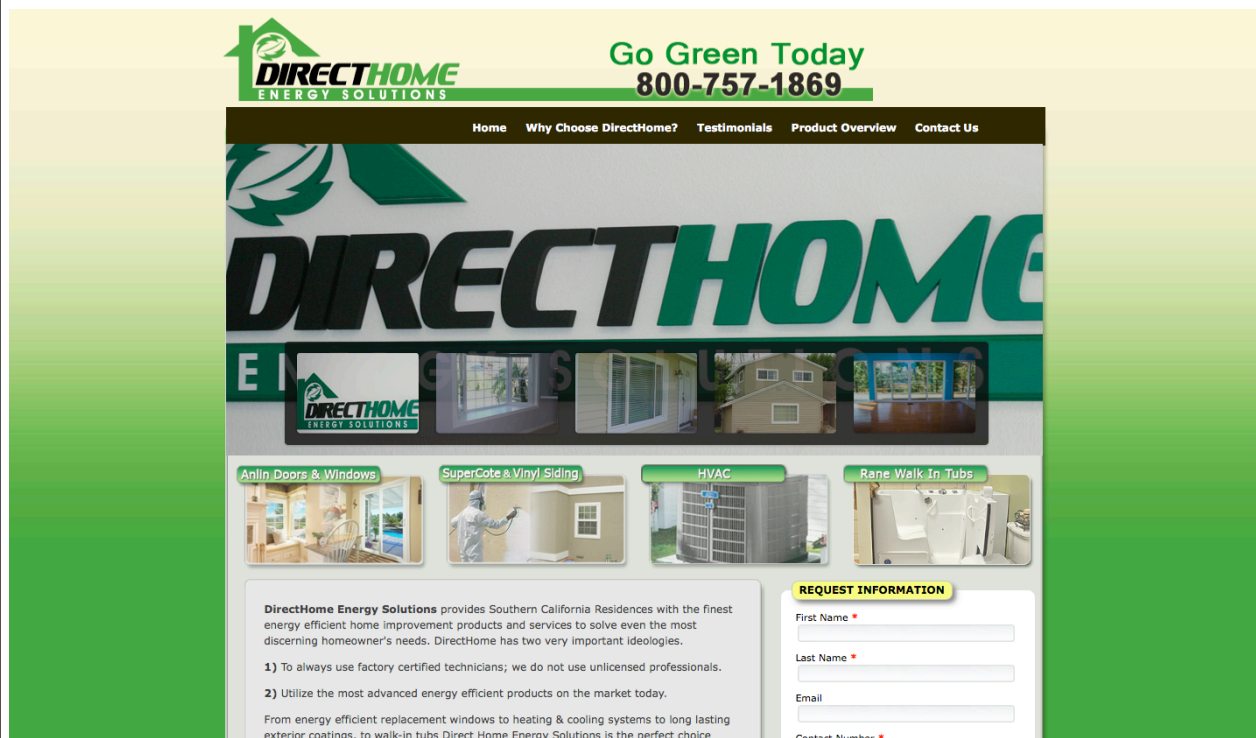
1 and each website is registered in Defendant's name. Furthermore, each of these  
2 websites and/or trade names were given to the at least one of the plaintiffs in this  
3 action.

4  
5 22. Plaintiff Haigler received phone calls from an entity claiming to be  
6 Direct Home Energy Solutions. This entity is associated with the website  
7 <http://directgogreen.com>. Defendant is the registrant of the website  
8 <http://directgogreen.com>.

```
9  
10 The Registry database contains ONLY .COM, .NET, .EDU domains and  
11 Registrars.  
12 Domain Name: DIRECTGOGREEN.COM  
13 Registrar URL: http://www.godaddy.com  
14 Registrant Name:  
15 Registrant Organization: GDFriend, Inc.  
16 Name Server: NS07.DOMAINCONTROL.COM  
17 Name Server: NS08.DOMAINCONTROL.COM  
18 DNSSEC: unsigned
```

9

14 23. Below is a screenshot of [www.directgogreen.com](http://www.directgogreen.com).



28 <sup>9</sup> <http://domaintz.com/tools/whois/directgogreen.com>

24. Defendant also uses the name Everlast Home Energy Solutions whose website everlastgogreen.com is nearly identical to Direct Home Energy Solutions' website directgogreen.com. Both websites are registered to Defendant.



25. Defendant's representative informed Plaintiff Timmons that its website was powerstargogreen.com. Defendant is also the registrant for the similarly looking website <http://powerstargogreen.com>.

The Registry database contains ONLY .COM, .NET, .EDU domains and Registrars.  
 Domain Name: POWERSTARGOGREEN.COM  
 Registrar URL: <http://www.godaddy.com>  
 Registrant Name: Ethan Sundilson  
 Registrant Organization: GDFriend, Inc. ←  
 Name Server: NS07.DOMAINCONTROL.COM  
 Name Server: NS08.DOMAINCONTROL.COM  
 DNSSEC: unsigned

10

<sup>10</sup> <http://domaintz.com/tools/whois/powerstargogreen.com>

1 Below is a screenshot of www.powerstargogreen.com, which is nearly identical to  
2 directogogreen.com and everlastgogreen.com



15 26. Defendant is also the registrant for www.ghip.org:<sup>11</sup> Defendant's  
16 representative informed Plaintiff Ambrezewicz that its website was ghip.org.  
17

18 Registrant Name: Gregory Friend  
 19 Registrant Organization: Gregory Friend  
 Registrant Street: 14252 Culver Dr #A213  
 Registrant City: Irvine  
 Registrant State/Province: California  
 Registrant Postal Code: 92604  
 Registrant Country: US  
 Registrant Phone: +1.3235435884  
 Registrant Phone Ext:  
 Registrant Fax:  
 Registrant Fax Ext:  
 Registrant Email: ethans@everlastgogreen.com  
 Registry Admin ID: C188037320-LROR

12

24 Below is a screenshot of www.ghip.org.  
25  
26

27 <sup>11</sup> Gregory Friend is associated with GDFriend, Inc.

28 <sup>12</sup> <http://domaintz.com/tools/whois/ghip.org>



Call: 949-537-7809



HOME

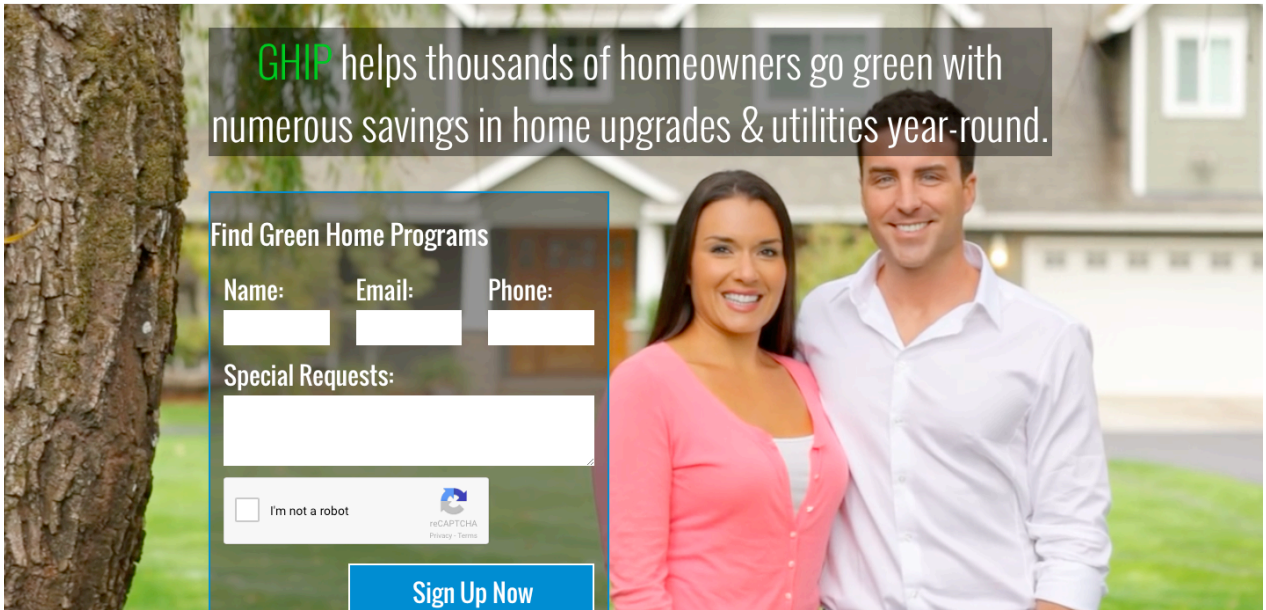
HOW GHIP WORKS

Areas Served

Southern California

Central Valley

CONTACT



27. Together, these websites work in such a manner to feed leads to Defendant in order to secure business and ultimately increase its bottom line.

**FACTS SPECIFIC TO PLAINTIFF AMBREZEWICZ**

28. On September 27, 2013, Plaintiff Ambrezewicz registered his cellular telephone number on the National Do Not Call Registry to avoid receiving unsolicited telemarketing calls.

29. On or about May 29, 2017 Plaintiff Ambrezewicz began receiving unsolicited autodialed calls on his cellular telephone from telephone number 714-205-9008.

30. On June 8, 2017 Plaintiff Ambrezewicz received a call on his cellular phone from the 714-205-9008 number. When Plaintiff Ambrezewicz answered this call he heard a pause at the beginning before an agent began to speak. Such pause

1 is indicative of the use of an automated telephone dialing system. The purpose of  
2 the call to Plaintiff Ambrezewicz was to solicit his business. Plaintiff Ambrezewicz  
3 demanded that the person stop calling him and to add his number to its internal do  
4 not call list.  
5

6 31. Despite Plaintiff Ambrezewicz's request for the calls to stop, he  
7 received another autodialed call from the 714-205-9008 number on his cellular  
8 phone on June 9, 2017. Plaintiff Ambrezewicz answered and again demanded that  
9 the person not call him again. During this call, out of frustration and for the  
10 purpose of getting the calls to stop, Plaintiff Ambrezewicz asked for details  
11 regarding the person's company, and was told that the person was calling on behalf  
12 of the "Green Home Investment Project". Plaintiff Ambrezewicz was also told by  
13 the caller that its website was ghip.org.  
14  
15  
16

17 32. Again, on July 7, 2017, he received another autodialed call on his  
18 cellular telephone from telephone number 909-318-0496. As Plaintiff did with the  
19 previous two calls, he asked that the person not call him again.  
20

21 33. GDFriend is the owner and/or user of the 714-205-9008 number and  
22 the 909-318-0496 number.  
23

24 34. All of GDFriend's calls to Plaintiff are in violation of the Do Not Call  
25 Registry regulations because over 30 days had passed since Plaintiff Ambrezewicz  
26 registered his telephone number on the Do Not Call Registry.  
27  
28



1 35. Despite Plaintiff Ambrezewicz’s repeated requests for GDFriend to  
2 stop calling him, GDFriend continued to contact or attempt to contact him.

3 **FACTS SPECIFIC TO PLAINTIFF TIMMONS**  
4

5 36. On June 1, 2016, Plaintiff Timmons registered his cellular telephone  
6 number on the National Do Not Call Registry to avoid receiving unsolicited  
7 telemarketing calls on his cellular phone.  
8

9 37. On or about June 20, 2017 Plaintiff Timmons began to receive  
10 unsolicited autodialed telephone calls on his cellular telephone from telephone  
11 number 909-699-9021.  
12

13 38. On June 27, 2017 Plaintiff Timmons received a call on his cellular  
14 phone from the 909-699-9021 number. This call was not answered. Immediately  
15 after this call, Plaintiff Timmons called the 909-699-9021 number back to find out  
16 who was calling. When someone answered, Plaintiff Timmons explained to the  
17 person that his phone number is registered with the National Do Not Call Registry;  
18 he doesn’t own a home; and he specifically wanted the calls to stop.  
19  
20

21 39. The purpose of the calls made to Plaintiff Timmons were to solicit his  
22 business.  
23

24 40. Despite this request for the calls to stop, on July 1, 2017 Plaintiff  
25 Timmons received another autodialed call on his cellular phone from the 909-699-  
26 9021 number. Plaintiff Timmons answered this call and again asked that the person  
27 stop calling him.  
28

1 41. Despite Plaintiff Timmons' second request for the calls to stop, he  
2 received another autodialed call on his cellular phone on July 3, 2017 from the 909-  
3 699-9021 number. Again, Plaintiff asked the person to stop calling him.

4  
5 42. Later in the day Plaintiff Timmons received yet another autodialed call  
6 on his cellular phone from the 909-699-9021 number. Plaintiff Timmons answered  
7 this call and again asked that the calls stop.

8  
9 43. Plaintiff Timmons received another autodialed call on his cellular  
10 phone from the 909-699-9021 number on July 5, 2017. Plaintiff Timmons  
11 answered the call and asked whom the agent worked for. Plaintiff Timmons was  
12 given the website powerstargogreen.com. As with the previous calls, Plaintiff  
13 Timmons again asked that the person stop calling him. Powerstargogreen.com is  
14 registered to GDFriend.

15  
16 44. Plaintiff Timmons received two more calls from the 909-699-9021  
17 number on July 15, 2017 and July 22, 2017. These calls were not answered.

18  
19 45. All of GDFriend's calls to Plaintiff Timmons are in violation of the Do  
20 Not Call Registry regulations because over 30 days had passed since Plaintiff  
21 Timmons registered his telephone number on the Do Not Call Registry.

22  
23 46. Despite Plaintiff Timmons' repeated requests for GDFriend to stop  
24 calling him, GDFriend continued to contact or attempt to contact him.

25  
26 **FACTS SPECIFIC TO PLAINTIFF HAIGLER**

1           47.    On July 2, 2003, Plaintiff Haigler registered his cellular telephone  
2 number on the National Do Not Call Registry to avoid receiving unsolicited  
3 telemarketing calls on his cellular telephone.  
4

5           48.    On or about January of 2017, and more than 30 days after his number  
6 was registered on the National Do Not Call Registry, Plaintiff Haigler started to  
7 receive a series of harassing telemarketing calls from telephone number 949-728-  
8 5353.  
9

10          49.    Each time Plaintiff Haigler answered a call from the 949-728-5353  
11 number on his cellular telephone, he heard a pause before being connected to a live  
12 representatives. Such pause is indicative of the use of an autodialer.  
13

14          50.    After answering a call from the 949-728-5353 number, a representative  
15 came on the line and claimed to be calling on behalf of DirectHome Energy  
16 Solutions.  
17

18          51.    Each time Plaintiff Haigler answered a call on his cellular telephone  
19 from the 5353 Number, the person on the other line asked for a “Jimmy.”  
20

21          52.    Each time Plaintiff Haigler answered a call from the 949-728-5353  
22 number on his cellular telephone, he informed the caller that he is not associated  
23 with the “Jimmy” he or she is looking for. Furthermore, each time Plaintiff Haigler  
24 answered a call from the 949-728-5353 number, he directly told the person on the  
25 end of the line to stop calling him.  
26  
27  
28

1           53. On at least one of the calls that Plaintiff Haigler answered from the  
2 949-728-5353 number, the caller indicated that the purpose of the call was to solicit  
3 Plaintiff Haigler to utilize the caller's home-improvement services.  
4

5           54. On at least one occasion, out of frustration and for the sole purpose of  
6 getting the calls to stop, Plaintiff Haigler made an appointment for "Jimmy" to have  
7 the caller's company come to Plaintiff Haigler's house.  
8

9           55. Despite Plaintiff Haigler's request for the autodialed calls to his  
10 cellular telephone to stop, he continued to receive calls from the 949-728-5353  
11 number for the purpose of soliciting his business.  
12

13           56. For example, Plaintiff Haigler received unwanted solicitation calls  
14 from the 949-728-5353 number on the following dates: 1.) January 4, 2017; 2.)  
15 January 5, 2017 at 10:01 a.m. and 12:02 p.m.; 3.) January 9, 2017; 4.) January 17,  
16 2017; and January 23, 2017.  
17

18           57. All of GDFriend's calls to Plaintiff Haigler are in violation of the Do  
19 Not Call Registry regulations because over 30 days had passed since Plaintiff  
20 Haigler's number was registered on the Do Not Call Registry.  
21

22           58. Despite Plaintiff Haigler's repeated requests for GDFriend to stop  
23 calling him, GDFriend continued to contact or attempt to contact him.  
24

25           59. Plaintiff Haigler never consented in writing or otherwise to receive  
26 autodialed telephone calls on his cellular telephone from GDFriend.  
27  
28

1           60. Plaintiffs have never consented in writing or otherwise to receive  
2 autodialed telephone calls on his cellular telephone from GDFriend.

3           61. Plaintiffs do not have a relationship with GDFriend, have never  
4 provided their telephone number to GDFriend, and have never requested that  
5 GDFriend place calls to them or offer them its services. Simply put, Plaintiffs have  
6 never provided any form of prior express written consent to GDFriend to place calls  
7 to them and have no business relationship with GDFriend.  
8

9           62. GDFriend at all times is and was aware that the above-described  
10 autodialed telephone calls were and are being made to consumers like the Plaintiffs  
11 who had not consented to receive them and whose telephone numbers have been  
12 registered with the National Do Not Call Registry.  
13

14           63. By making unauthorized autodialed calls to consumers' cellular  
15 telephones as alleged herein, GDFriend has caused consumers actual, concrete harm  
16 and annoyance. In the present case, a consumer could be subjected to many  
17 unsolicited autodialed telephone calls, as GDFriend's opt-out system does not work.  
18

19           64. In order to redress these injuries, Plaintiffs, on behalf of themselves  
20 and the Classes of similarly situated individuals, brings suit under the Telephone  
21 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited  
22 autodialed telephone calls to cellular telephones.  
23

24           65. On behalf of the Classes, Plaintiffs seek an injunction requiring  
25 GDFriend to cease all unauthorized autodialed telephone calling activities,  
26  
27  
28

1 declaratory relief establishing that GDFriend's calls violated the TCPA, and an  
2 award of statutory damages to the class members, together with costs and  
3 reasonable attorneys' fees.

## 4 CLASS ALLEGATIONS

5  
6 66. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure  
7 23(a), (b)(2), and (b)(3) on behalf of themselves and four Classes defined as  
8 follows:  
9

10 **Autodialed No Consent Class:** All persons in the United States who  
11 from four years prior to the filing of the initial complaint in this action  
12 to the present: (1) Defendant (or a third person acting on behalf of  
13 Defendant) called; (2) on the person's cellular telephone number; (3)  
14 for the purpose of marketing Defendant's products and services; and  
15 (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 Plaintiffs.

16 **Autodialed Stop Call Class:** All persons in the United States who  
17 from four years prior to the filing of the initial complaint in this action  
18 to the present: (1) Defendant (or a third person acting on behalf of  
19 Defendant) called, (2) on the person's cellular telephone number, (3)  
20 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 from Defendant.

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

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**Stop Calling Do Not Call Class:** All individuals in the United States (1) who had his or her telephone number(s) registered with the National Do Not Call Registry for at least thirty days; (2) who received more than one telephone call made by or on behalf of Defendant within a 12-month period; and (3) who requested that Defendant not call them again (4) and received at least two additional calls from Defendant more than thirty (30) days after requesting for the calls to stop.

67. 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) Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons. Plaintiffs anticipate 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.

68. **Numerosity:** The exact sizes of the Classes are unknown and not available to Plaintiffs at this time, but individual joinder is impracticable. On information and belief, Defendant made telephone calls to thousands of consumers

1 who fall into the definition of the Classes. Members of the Classes can be easily  
2 identified through Defendant's records and by reference to other objective criteria.

3           69. **Commonality:** There are several questions of law and fact common to  
4 the claims of Plaintiffs and the Classes on which every class member's claim will  
5 either succeed or fail, and which will be proven using common evidence. Such  
6 common questions for the Classes include, without limitation:  
7

- 8
- 9           (a) Whether Defendant's conduct violated the TCPA;
  - 10           (b) Whether Defendant systematically made telephone calls to  
11 individuals who did not provide Defendant and/or its agents with their  
12 prior express written consent to receive such phone calls;
  - 13           (c) Whether Defendant made the calls with the use of an ATDS;
  - 14           (d) Whether Defendant systematically made multiple telephone  
15 calls within the same 12-month period to consumers who telephone  
16 numbers were registered with the National Do Not Call Registry;
  - 17           (e) Whether members of the Classes are entitled to treble damages  
18 based on the willfulness of Defendant's conduct; and
  - 19           (f) Whether Defendant systematically made telephone calls to  
20 consumers after they explicitly asked not to be called by Defendant.  
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25           70. **Typicality:** Plaintiffs' claims are typical of the claims of the other  
26 members of the Classes. Plaintiffs are members of the Classes, and if Defendant  
27 violated the TCPA to call Plaintiffs then it violated the TCPA to call the other class  
28



1 members. Plaintiffs and the Classes sustained damages as a result of Defendant's  
2 uniform wrongful conduct during transactions with Plaintiffs and the Classes.

3       71. **Adequate Representation:** Plaintiffs will fairly and adequately  
4 represent and protect the interests of the Classes, and has retained counsel  
5 competent and experienced in complex class actions. Plaintiffs have no interest  
6 antagonistic to those of the Classes, and Defendant has no defenses unique to  
7 Plaintiffs.  
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10       72. **Policies Generally Applicable to the Classes:** This class action is  
11 appropriate for certification because Defendant has acted or refused to act on  
12 grounds generally applicable to the Classes as respective wholes, thereby requiring  
13 the Court's imposition of uniform relief to ensure compatible standards of conduct  
14 toward the Class members, and making final injunctive relief appropriate with  
15 respect to the Classes as respective wholes. Defendant's practices challenged herein  
16 apply to and affect the Class members uniformly, and Plaintiffs' challenge of those  
17 practices hinges on Defendant's conduct with respect to the Classes as respective  
18 wholes, not on facts or law applicable only to Plaintiffs.  
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22       73. **Predominance:** The common questions of law and fact set forth above  
23 predominate over any individual issues. Whether Defendant properly obtained prior  
24 express consent to call and whether Defendant used an ATDS go to the very heart  
25 of the case and are facts on which all class members' claims hinge. As such, the  
26 common issues predominate over any supposed individualized issues.  
27  
28

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

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21                           **FIRST CAUSE OF ACTION**  
22                           **Violation of 47 U.S.C. § 227 *et seq.***  
23                           **(On behalf of Plaintiffs and the Autodialed No Consent Class)**

24           75.    Defendant made unsolicited and unwanted autodialed telephone calls  
25 to telephone numbers belonging to Plaintiffs and the other members of the  
26 Autodialed No Consent Class—without their prior express written consent.

1           76. Defendant's calls were made for the purpose of marketing Defendant's  
2 energy-efficient home improvement services.

3           77. At no time did Defendant obtain prior express written consent that  
4 disclosed to the called party that the called party consented to be called with an  
5 automatic telephone dialing system or prerecorded voice or that providing such  
6 consent was not a condition (direct or indirect) of any purchase of any goods or  
7 services.  
8

9  
10           78. Further, Defendant made the telephone calls using equipment that had  
11 the capacity to store or produce telephone numbers to be called using a random or  
12 sequential number generator, and/or receive and store lists of phone numbers, and  
13 to dial such numbers, *en masse*. Defendant utilized equipment that made the  
14 telephone calls to Plaintiffs and other members of the Autodialed No Consent Class  
15 simultaneously and without human intervention.  
16

17  
18           79. By making unsolicited telephone calls to Plaintiffs and members of the  
19 Autodialed No Consent Class's cellular telephones without prior express written  
20 consent, and by utilizing an ATDS, Defendant violated 47 U.S.C. §  
21 227(b)(1)(A)(iii).  
22

23           80. As a result of Defendant's unlawful conduct, Plaintiffs and the  
24 members of the Autodialed No Consent Class suffered actual damages in the form  
25 of monies paid to receive the unsolicited telephone calls on their cellular telephones  
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1 and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of  
2 \$500 in damages for each such violation of the TCPA.

3 81. In the event that the Court determines that Defendant's conduct was  
4 willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the  
5 amount of statutory damages recoverable by Plaintiffs and the other members of the  
6 Autodialed No Consent Class.  
7

8  
9 **SECOND CAUSE OF ACTION**  
10 **Violation of 47 U.S.C. § 227 *et seq.***  
11 **(On behalf of Plaintiffs and the Autodialed Stop Call Class)**

12 82. Plaintiffs incorporate and re-allege paragraphs 1-74 as if fully set forth  
13 herein.

14 83. Defendant made unsolicited and wanted telemarketing calls to  
15 telephone numbers belonging to Plaintiffs and the other members of the Autodialed  
16 Stop Call Class on their cellular telephone *after* the person had informed Defendant  
17 that he or she no longer wished to receive such calls from Defendant.  
18

19 84. Defendant made the telephone calls using equipment that had the  
20 capacity to store or produce telephone numbers to be called using a random or  
21 sequential number generator, and/or receive and store lists of phone numbers, and  
22 to dial such numbers, *en masse*.  
23

24 85. By making unsolicited telephone calls to Plaintiffs and members of the  
25 Autodialed Stop Call Class's cellular telephones after they requested to no longer  
26  
27  
28

1 receive calls, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by continuing to call  
2 them without prior express written consent.

3 86. As a result of Defendant’s unlawful conduct, Plaintiffs and the  
4 members of the Autodialed Stop Call Class suffered actual damages in the form of  
5 monies paid to receive the unsolicited telephone calls on their cellular telephones  
6 and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, inter alia, a minimum of  
7  
8 \$500 in damages for each such violation of the TCPA.  
9

10 87. Should the Court determine that Defendant’s conduct was willful and  
11 knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of  
12 statutory damages recoverable by Plaintiffs and the other members of the  
13 Autodialed Stop Call Class.  
14

15 **THIRD CAUSE OF ACTION**  
16 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.***  
17 **(On behalf of Plaintiffs and Do Not Call Registry Class)**

18 88. Plaintiffs incorporate and re-allege paragraphs 1-74 as if fully set forth  
19 herein.  
20

21 89. The TCPA, specifically 47 U.S.C. § 227(c), provides that any “person  
22 who has received more than one telephone call within any 12-month period by or  
23 on behalf of the same entity in violation of the regulations prescribed under this  
24 subsection may” bring a private action based on a violation of said regulations,  
25 which were promulgated to protect telephone subscribers’ privacy rights to avoid  
26 receiving telephone solicitations to which they object.  
27  
28

1           90. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c),  
2 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]  
3 residential telephone subscriber who has registered his or her telephone number on  
4 the national do-not-call registry of persons who do not wish to receive telephone  
5 solicitations that is maintained by the federal government.”  
6

7           91. 47 C.F.R. § 64.1200(e), in turn, provides that § 64.1200(c) and (d) “are  
8 applicable to any person or entity making telephone solicitations or telemarketing  
9 calls to wireless telephone numbers to the extent described in the Commission’s  
10 Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules and Regulations  
11 Implementing the Telephone Consumer Protection Act of 1991.’” (the “Report and  
12 Order”).  
13  
14

15           92. And the Report and Order thereafter states as follows:  
16

17           The Commission’s rules provide that companies making telephone  
18 solicitations to residential telephone subscribers must comply with  
19 time of day restrictions and must institute procedures for maintaining  
20 do-not-call lists. For the reasons described above, we conclude that  
21 these rules apply to calls made to wireless telephone numbers. We  
22 believe that wireless subscribers should be afforded the same  
23 protections as wireline subscribers.<sup>13</sup>

24           93. 47 C.F.R. § 64.1200(d) provides that “[n]o person or entity shall  
25 initiate any call for telemarketing purposes to a residential telephone subscriber  
26 unless such person or entity has instituted procedures for maintaining a list of  
27 persons who request not to receive telemarketing calls made by or on behalf of that  
28

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<sup>13</sup> 68 Fed. Reg. 44143, 44166 (July 25, 2003).

1 person or entity. The procedures instituted must meet the following minimum  
2 standards:

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

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

9 (3) Recording, disclosure of do-not-call requests. If a person or entity  
10 making a call for telemarketing purposes (or on whose behalf such a  
11 call is made) receives a request from a residential telephone subscriber  
12 not to receive calls from that person or entity, the person or entity  
13 must record the request and place the subscriber's name, if provided,  
14 and telephone number on the do-not-call list at the time the request is  
15 made. Persons or entities making calls for telemarketing purposes (or  
16 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 . . . .

17 (4) Identification of sellers and telemarketers. A person or entity  
18 making a call for telemarketing purposes must provide the called party  
19 with the name of the individual caller, the name of the person or entity  
20 on whose behalf the call is being made, and a telephone number or  
21 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.

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

27 (6) Maintenance of do-not-call lists. A person or entity making calls  
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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.

94. 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 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).

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

96. Defendant also violated 47 C.F.R. § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiffs 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



1 telemarketing calls from them, without training its employees or personnel in the  
2 use of any such internal do not call list, and in not recording and honoring do not  
3 call requests made by consumers.  
4

5 97. Defendant further violated 47 U.S.C. § 227(c)(5) because Plaintiffs  
6 and the Do Not Call Registry Class received more than one telephone call in a 12-  
7 month period made by or on behalf of Defendant in violation of 47 C.F.R. §  
8 64.1200, as described above.  
9

10 98. As a result of Defendant's conduct as alleged herein, Plaintiffs and the  
11 Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §  
12 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such  
13 violations of 47 C.F.R. § 64.1200. To the extent Defendant's misconduct is  
14 determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. §  
15 227(c)(5), treble the amount of statutory damages recoverable by Plaintiff and the  
16 members of the Do Not Call Registry Class.  
17  
18

19 **FOURTH CAUSE OF ACTION**  
20 **Violation of 47 U.S.C. § 227 *et seq.***

21 **(On behalf of Plaintiffs and the Stop Calling Do Not Call Class)**

22 99. Plaintiffs incorporate and re-allege by reference paragraphs 1-74 as if  
23 fully set forth herein.  
24

25 100. Defendant violated 47 C.F.R. §64.1200 by initiating calls for  
26 telemarketing purposes to residential telephone subscribers such as Plaintiff and the  
27 Stop Calling Do Not Call Class who were registered on the National Do Not Call  
28

1 Registry and who specifically told Defendant to stop calling them, and who  
2 received two more calls within a 12-month period from Defendant at least thirty  
3 (30) days after informing Defendant to stop calling them. Defendant made these  
4 calls without instituting procedures that comply with the minimum regulatory  
5 standards for maintaining a list of persons who request not to receive telemarketing  
6 calls from them or training its personnel in the existence and use of any such list.  
7

8  
9 101. As a result of Defendant's unlawful conduct, Plaintiffs and the Stop  
10 Calling Do Not Call Class suffered actual damages and, under section 47 U.S.C. §  
11 227(c), Plaintiff and each member of the Stop Calling Do Not Call Class is each  
12 entitled to receive up to \$500 in damages for each violation of 47 C.F.R. § 64.1200.  
13

14 102. Should the Court determine that Defendant's conduct was willful and  
15 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of  
16 statutory damages recoverable by Plaintiffs and the other members of the No  
17 Consent Do Not Call Class.  
18

19  
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff Lucas Ambreiewicz, Plaintiff Edward Timmons,  
22 and Plaintiff Haigler, on behalf of themselves and on behalf of the Classes, pray for  
23 the following relief:  
24

25 103. An order certifying the Classes as defined above, appointing Plaintiffs  
26 Mark Haigler, Lucas Ambreiewicz and Edward Timmons as the representative's of  
27 the Classes and appointing their counsel as Class Counsel.  
28

1           104. A declaratory judgment declaring that Defendant's calls violated the  
2 TCPA, that Defendant's equipment constitutes an automatic telephone dialing  
3 system under the TCPA, that Defendant failed to obtain prior express written  
4 consent to call Plaintiff or any of the Class members, that Defendant failed to  
5 maintain an internal Do Not Call list and to train its personnel engaged in  
6 telemarketing in the existence and use of such a list, and that Defendant failed to  
7 honor stop-call requests to Plaintiffs and the members of the Autodialed Stop Call  
8 Class.  
9

10  
11           105. An order requiring Defendant to disgorge any ill-gotten funds acquired  
12 as a result of its unlawful telephone calling practices.  
13

14           106. An award of actual and statutory damages, to be trebled in the event  
15 the Court finds that Defendant has acted knowingly and willfully, to be paid into a  
16 common fund for the benefit of the Class Members.  
17

18           107. An injunction requiring Defendant and its agents to cease all  
19 unsolicited telephone calling activities, to honor do not call requests, to provide a  
20 domestic number for opting out, and otherwise protecting the interests of the  
21 Classes.  
22

23           108. An injunction prohibiting Defendant from using, or contracting the use  
24 of, an automatic telephone dialing system without obtaining, and maintaining  
25 records of, call recipient's prior express written consent to receive calls made with  
26 such equipment.  
27  
28

1 109. An injunction prohibiting Defendant from contracting with any third-  
2 party for marketing purposes until it establishes and implements policies and  
3 procedures for ensuring the third-party's compliance with the TCPA.  
4

5 110. An injunction prohibiting Defendant from conducting any future  
6 telemarketing activities until it has established an internal Do Not Call List as  
7 required by the TCPA and trained its employees in the existence and use of its  
8 internal Do Not Call list.  
9

10 111. An award of reasonable attorneys' fees and costs to be paid from the  
11 common fund; and such other and further relief that the Court deems reasonable  
12 and just.  
13

14 **JURY DEMAND**

15 Plaintiffs request a trial by jury of all claims that can be so tried.  
16

17 Respectfully submitted,  
18

19 Dated: November 1, 2017

**LUCAS AMBREZEWICZ, EDWARD  
20 TIMMONS, and MARK HAIGLER,**  
individually and on behalf of all others  
21 similarly situated,  
22

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