

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS

<p>CRAIG CUNNINGHAM, Plaintiff,</p> <p>v.</p> <p>Manasseh Jordan Ministries, Inc., aka Bullion Fitness Inc., aka Kingdom Ministries Church, Inc., Yakim Manasseh Jordan, aka Manasseh Jordan, MJ Ministries Spreading the Gospel, Inc., John/Jane Does 1-5</p> <p>Defendant</p>	<p>§ § § § § § § § § §</p> <p>4:19cv494 ALM-CAN</p> <p>FILED</p> <p>JUL 05 2019</p> <p>Clerk, U.S. District Court Texas Eastern</p>
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Plaintiff's Original 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 at 3000 Custer Road, ste 270-206 Plano, Tx 75075.
2. Defendant MANASSEH JORDAN MINISTRIES, INC. ("Manasseh Jordan Ministries") is a defunct and administratively dissolved company located and formerly incorporated in both New York and Texas. Upon information and belief, Manasseh Jordan Ministries also does business under the names of "Bullion Fitness, Inc," an administratively dissolved Florida corporation, and "Kingdom Ministries Church, Inc," an administratively dissolved Georgia corporation. These companies operate as defunct holding corporations and pass-through corporations for the benefit of Manasseh Jordan and Manasseh Jordan Ministries, according to sworn deposition testimony given in an

unrelated case. Manasseh Jordan Ministries' principal business is described as "mov[ing] in the realm of accurate prophetic ministry" and solicits monetary "donations" from victims throughout the US by utilizing prerecorded "robocalls" placed using an automated telephone dialing system, or "ATDS". Despite being administratively dissolved, Manasseh Jordan Ministries maintains a mailing address at 310 RIVERSIDE DR. NEW YORK, NY 10025 or 708 3rd Ave, Floor 6, New York, New York, 10017, or 17001 Collins Ave., Apt 3202 Sunny Isles Beach, FL 33160 in addition to their stated address of PO Box 3320 NY, NY 10163 where he can be served.

3. Defendant YAKIM MANASSEH JORDAN ("JORDAN") is an adult individual who is the former Principal of Manasseh Jordan Ministries and upon information and belief is Manasseh Jordan Ministries' Primary Owner and namesake. JORDAN plays a role in the daily business operations of Manasseh Jordan Ministries, which are now being conducted in his personal capacity and without the benefit of a corporation, the corporations having been dissolved. JORDAN is an adult individual and citizen of the United States and can be served at 310 RIVERSIDE DR. NEW YORK, NY 10025 or 708 3rd Ave, Floor 6, New York, New York, 10017, or 17001 Collins Ave., Apt 3202 Sunny Isles Beach, FL 33160 in addition to their stated address of PO Box 3320 NY, NY 10163. As Principal of the now-defunct Manasseh Jordan Ministries and its alter egos, JORDAN is the primary individual who reaps the benefit of the tortious and illegal conduct described herein that is technically carried out only in Manasseh Jordan Ministries' name. Such tortious, or *ultra vires*, conduct exceeds the permissible actions of corporations both in Pennsylvania, Texas, New York, Florida, Georgia, and nationwide.

1. Defendant MJ MINISTRIES SPREADING THE GOSPEL, INC., is an active

company located and incorporated in Georgia. Upon information and belief, MJ MINISTRIES SPREADING THE GOSPEL, INC., is an *alter ego* and shell corporation of Manasseh Jordan Ministries that is used to collect donated funds via credit card, online PayPal payments, and checks, which is then ultimately funneled to Defendant JORDAN and Manasseh Jordan Ministries. Upon information and belief, this “pass through” corporation is used to shield the assets of the aforementioned Defendants from lawsuits and governmental enforcement actions arising from, but not limited to, allegations of violations of the TCPA. MJ MINISTRIES SPREADING THE GOSPEL, INC., maintains a registered agent address at 400 WEST PEACHTREE ST, NW, SUITE 4-1272, ATLANTA, GA, 30308.

4. At all times herein mentioned, Defendants conspired by means of mutual understanding, either expressly or impliedly, among themselves and others in engaging and/or planning to engage in the activities detailed herein to accomplish the wrongful conduct, wrongful goals, and wrongdoing
5. John/Jane Does 1-5 are other liable parties currently unknown to the Plaintiff.

JURISDICTION AND VENUE

6. 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.

7. **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.
8. This Court has specific personal jurisdiction over the defendants because the calls at issue were sent by or on behalf of the defendants.
9. **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.
10. 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**

11. In 1991, Congress enacted the TCPA in response to a growing number of consumer complaints regarding telemarketing.
12. 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).

13. 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).
14. 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).
15. 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
16. 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).
17. 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.
18. 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).
19. 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.

20. *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).
21. 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).
22. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).
23. 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.”).

24. Defendant JORDAN is personally liable under the “participation theory” of liability because he is the Principal owner of the now-defunct Manasseh Jordan Ministries, knew of Manasseh Jordan Ministries’ violations, has been sanctioned for these violations by numerous state governments, state attorneys general, and the Federal Communications Commission, and directed employees and/or agents of Manasseh Jordan Ministries to continue making those violations. In addition, it is Defendant JORDAN’s voice on each of the prerecorded telephone calls Plaintiff received, so as to essentially have made the calls himself. This is because JORDAN authorized and oversaw each of Manasseh Jordan Ministries’ telemarketing processes. In fact, it was his idea to begin marketing Manasseh Jordan Ministries’ via illegal telemarketing calls. Furthermore, JORDAN is also personally liable because he was responsible for ensuring Manasseh Jordan Ministries’ employees’ TCPA compliance and observing corporate formalities, which he admits he does not do

25. The Texas Business and Commerce code has an analogous portion that is related to the TCPA and was violated in this case.

26. 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

27. The Defendants have placed multiple telemarketing calls to the Plaintiff's cell phones in an attempt to solicit donations and making over the top religious claims. Defendant Yakim Jordan claims to be a prophet and can raise the dead for a mere donation of \$1,000 among other sensational claims and has appeared with faith healer Benny Hinn on multiple occasions, who limits his miracles to merely curing cancer and other serious diseases.

Alleged calls to the Plaintiff and violations of 47 USC 227(b) and Yakim Manasseh Jordan and Manasseh Jordan Ministries, Inc. and MJ Ministries Spreading the Gospel, Inc

28. Mr. Cunningham received at least 99 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 Plaintiff is in the process of obtaining his call records and shall provide an updated supplemental statement of the calls alleged. The calls were on behalf of each of the defendants in this case soliciting the Plaintiff to give money to the 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. The Plaintiff received calls on behalf of the defendants by 3rd party telemarketers for both

direct and vicarious liability in this case.

29. The calls all contained multiple different pre-recorded messages recorded by Defendant Jordan in his own voice each day.
30. The Plaintiff received multiple calls from multiple spoofed and non-working caller ID's all designed to trick consumers into picking up the phone by using false, misleading, and fraudulent caller ID's that are local to the calling area for the Plaintiff's cell phones. These calls were not related to an emergency purpose and were placed without the Plaintiff's consent.
31. The Defendants knew full well that overseas telemarketers were placing calls on their behalf to consumers across the country pitching debt relief services by overseas telemarketers which was initiated using an automated telephone dialing system and contained a pre-recorded message as Yakim Jordan has been personally sued multiple times in the past for violating the TCPA (See *Molitor v Manasseh Jordan Ministries, Inc.*, 1:16-cv-02106, Northern District of Illinois 2019) and has been cited by the FCC for making illegal robocalls in violation of the TCPA as far back as 2016 (Ex A). The calls also specifically state the Defendant's PO Box in New York is an acceptable address to receive mail and to send payments.
32. Mr. Cunningham has a limited data plan. Incoming calls and text messages chip away at his monthly allotment.
33. Mr. Cunningham has limited data storage capacity on his cellular telephone.
Incoming calls from the defendants consumed part of this capacity.
34. No emergency necessitated the calls
35. Each call was sent by an ATDS.

Liability of Co-defendants MJ Ministries Spreading the Gospel, Inc.

36. In an effort to identify the liable parties, the Plaintiff made a “donation” via credit card and observed the entity named “MJ Spreading” charged the Plaintiff’s credit card on June 29th 2019, which is approximately the same day the Plaintiff made a donation during one of the automated calls.

37. All of these entities are liable for the telemarketing calls to the Plaintiff.

Knowing and Willful Violations of Telemarketing Regulations 47 USC 227(c)(5)

38. Mr. Cunningham asked for an internal do-not-call policy

39. The Defendants knowingly violated the TCPA by initiating automated calls with pre-recorded messages to the Plaintiff without maintaining an internal do not call policy in violation of 47 CFR 64.1200(d).

40. The Defendants never sent Mr. Cunningham any do-not-call policy in violation of 47 CFR 64.1200(d)(1)

41. The Defendants placed telemarketing calls without having a written do-not-call policy in place to Mr. Cunningham in violation of 47 CFR 64.1200(d)(1)

42. The Defendants placed telemarketing calls to the Plaintiff without training their agents engaged in telemarketing on the existence and use of any do-not-call list in violation of 47 CFR 64.1200(d)(2)

43. The defendants placed telemarketing calls without identifying themselves or the party they were calling on behalf of in violation of 47 CFR 64.1200(d)(4)

Yakim Manasseh Jordan’s Control over the telemarketing calls Robocalling and Telemarketing

44. At all times relevant to the claims alleged herein, Yakim Manasseh Jordan was in

charge of each of these legal entities. Each and every call was placed on behalf of the corporate entities owned by Yakim Manasseh Jordan.

45. Yakim Manasseh Jordan was aware that calls were being placed by or on behalf of his company, via automated, telemarketing calls en masse to people, including Plaintiff.
46. As the defendant's senior-most executive, Yakim Manasseh Jordan had the power to stop these spam campaigns.
47. As the defendant's , senior-most executive, Yakim Manasseh Jordan had the power to fire the managers and employees taking part of the day-to-day operations of these illegal robocalling operations.
48. Instead, Yakim Manasseh Jordan allowed the calls to continue and the responsible managers to keep their jobs—despite his knowledge of frequent do-not-call complaints from recipients of these messages, including the Plaintiff.

The Plaintiff's cell phone is a residential number

49. The calls were to the Plaintiff's cellular phones ***-***-9191 and ***-***-1977, which is the Plaintiff's personal cell phones 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 phones for navigation purposes, sending and receiving emails, timing food when cooking, and sending and receiving text messages. The Plaintiff further has his cell phones registered in his personal name, pays the cell phones from his personal accounts, and the phone is not primarily used for any business purpose.

Violations of the Texas Business and Commerce Code 305.053

50. The actions of Yakim Manasseh Jordan and his corporations 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 John Wilhelm 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).
51. The calls by Yakim Manasseh Jordan violated Texas law by spoofing the caller ID's per 47 USC 227(e) which in turn violates the Texas statute.

Causes of Action

First Cause of Action (Negligent Violation of the TCPA "ATDS Call" Prohibition, 47 U.S.C. § 227 et seq.)

52. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above. As a result of Defendants' and Defendants' agents negligent violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff seeks for himself \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

Second Cause of Action (Knowing and/or Willful Violation of the TCPA "ATDS Call" Prohibition, 47 U.S.C. § 227 et seq.)

53. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.
54. As a result of Defendants' and Defendants' agents knowing and/or willful violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff seeks for himself treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3).

Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

Third Cause of Action (Negligent Violation of the TCPA “Prerecorded RoboCall” Prohibition, 47 U.S.C. § 227 et seq.)

55. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above. As a result of Defendants’ and Defendants’ agents negligent violations of 47 U.S.C. § 227(b)(1)(B), Plaintiff seeks for himself \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

56. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

Fourth Cause of Action (Knowing and/or Willful Violation of the TCPA “Prerecorded RoboCall” Prohibition, 47 U.S.C. § 227 et seq.)

57. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

58. As a result of Defendants’ and Defendants’ agents knowing and/or willful violations of 47 U.S.C. § 227(b)(1)(B), Plaintiff seeks for himself treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3). Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

Fifth Cause of Action (Negligent Violation of the TCPA “Do-Not-Call Policy” Requirement, 47 CFR 64.1200 et seq.)

59. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

60. As a result of Defendants’ and Defendants’ agents negligent violations of 47 CFR

64.1200(d)(1), Plaintiff seeks for himself \$500 in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

Sixth Cause of Action (Knowing and/or Willful Violation of the TCPA “Telemarketing Regulations” Requirement, 47 CFR 64.1200 et seq.)

61. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above. As a result of Defendants’ and Defendants’ agents knowing and/or willful violations of 47 CFR 64.1200(d)(1) Plaintiff seeks for himself treble damages up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

Seventh Cause of Action (Negligent Violation of the TCPA “Telemarketing Regulations, 47 CFR 64.1200 et seq.)

62. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above. As a result of Defendants’ and Defendants’ agents negligent violations of 47 CFR 64.1200(d)(3), Plaintiff seeks for himself \$500 in statutory damages for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

Eighth Cause of Action (Knowing and/or Willful Violation of the TCPA “Telemarketing Regulations” Requirement, 47 CFR 64.1200 et seq.)

63. Plaintiff incorporates and realleges, as though fully set forth herein, each of the paragraphs above.

64. As a result of Defendants’ and Defendants’ agents knowing and/or willful violations of 47 CFR 64.1200(d)(3) Plaintiff seeks for himself treble damages up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).

TCPA Statutory Authority and Damages

65. Plaintiff is entitled to damages for each of the causes of action defined above. Causes of Action listed are not merely alternative standards, but are rather statutory in nature and

arise as a matter of law. The TCPA is a strict liability statute, and as such, Plaintiff is entitled to such statutory remedies as a matter of law.

66. Plaintiff's Causes of Action one through two derive specific statutory authority from 47 USC § 227(b)(1)(A)(iii), which states it is 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 any automatic telephone dialing system... to any telephone number assigned to a... cellular telephone service... or any service for which the called party is charged for the call."
67. Similarly, Causes of Action three through four derive specific statutory authority from 47 U.S.C. § 227(b)(1)(B), which prohibits "initiat[ing] any telephone call to any residential telephone line using an artificial or prerecorded voice." The penalty for each *violation* of 47 U.S.C. § 227(b) is codified in 47 USC § 227(b)(3)(B), which permits "an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for **each such violation**, whichever is greater" and that "If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph," in addition to authorizing injunctive and common law relief.
68. Plaintiff's remaining Causes of Action derive specific statutory authority from 47 USC § 227(c) (1) and (2), which makes it an offense to violate any of the FCC's implementing regulations of the TCPA, codified in 47 CFR 64.1200. The penalty for this violation is codified in 47 USC § 227(c)(5)(B), which permits the same remedy of \$500 per violation. If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, treble the

\$500 award, in addition to authorizing injunctive and common law relief.

69. Such calculation of damages is concurrent with 6th and 11th Circuit precedent, and is separate, distinct, clear, and concise. *See Charvat v. NMP, LLC*, in which the Sixth Circuit Court of Appeals held that it is possible to allege violations of BOTH subsections 47 USC § 227(b) [Prerecorded RoboCall and ATDS regulations] and 47 USC § 227(c) [other violations], allowing for multiple violations per call. *See also, Lary v. Trinity Physician Fin. & Ins. Servs.*, in which the 11th Circuit, under 6th Circuit guidance in the Charvat cases, found that it is possible, beyond alleging multiple violations per call based on overall subsection (as in the Charvat case), to allege multiple violations within each subsection, such as the use of an ATDS and the use of a prerecorded message in the same call, both of which are violations of 47 USC § 227(b)(1)(A)(iii) and 47 USC § 227(b)(1)(B), respectively.
70. Plaintiff uses an identical method of calculating damages under the TCPA to that of Senior Judge Legrome D. Davis of the United States District Court for the Eastern District of Pennsylvania, in the case of *Shelton v. Doan Solutions, LLC 2:17-cv-02368* (Doc. 5). In his opinion determining damages in a default judgment motion, the judge found, under 6th and 11th circuit guidance, that the TCPA's caller ID spoofing provision was implied as a cause of action under 47 USC § 227(c), and that the procedural violations of failing to put Plaintiff on a do-not-call list or provide Plaintiff a copy of a do-not-call policy were separate procedural violations of 47 CFR 64.1200(d)(1) and (d)(3) actionable under 47 USC § 227(c), in addition to violations of 47 USC § 227(b)(1)(A) and 47 USC § 227(c)(3)(F).
71. Plaintiff's method was also held to be correct by Senior Judge Joel H. Slomsky in the case of *Perrong v. Tranzvia LLC Et al. 2:17-cv-3664-JHS* (Doc 7, 11, 18, 19), applying

the same reasoning as above.

I. 11TH Cause of Action Violations of The Texas Business and Commerce Code

305.053

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 **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.

3. 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)**

4. 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)**.

II. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Craig Cunningham prays for judgment against the 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;

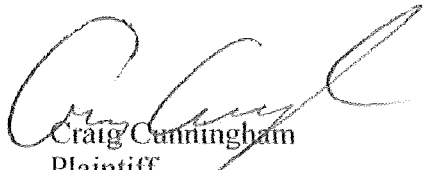
D. An award of \$6000 per call in statutory damages arising from the TCPA intentional violations jointly and severally against the corporation and individual for 30 calls.

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,

7/5/2019

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