

IN THE CIRCUIT COURT OF ST. LOUIS COUNTY  
STATE OF MISSOURI

KIMBERLY STARLING, )  
individually, and on behalf of all others )  
similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FARMERS INSURANCE )  
EXCHANGE, )  
FARMERS INSURANCE COMPANY, )  
INC., and )  
FIRE INSURANCE EXCHANGE, )  
 )  
 )  
 )  
Defendants. )

Case No.:

**JURY TRIAL DEMANDED**

**CLASS ACTION PETITION**

COMES NOW Plaintiff Kimberly Starling, individually, and on behalf of all others similarly situated, through her undersigned counsel, and for her Class Action Petition against Defendants Farmers Insurance Exchange, Farmers Insurance Company, Inc., and Fire Insurance Exchange, states:

**INTRODUCTION AND BACKGROUND ON THE TCPA**

1. Plaintiff Kimberly Starling (“Plaintiff” or “Starling”) brings this case to protect her privacy rights, namely the right to be left alone from unwanted telemarketing phone calls.
2. Plaintiff brings this suit to get telemarketers like Farmers Insurance Exchange, Farmers Insurance Company, Inc., and Fire Insurance Exchange, (collectively “Defendants” or “Farmers”), to stop texting her phone and the putative class members’ phones despite the fact Plaintiff and the putative class members registered their phone numbers on the National Do-Not-Call Registry (“DNC List”).

3. In 1991, after passage with bipartisan support in Congress, President George H.W. Bush signed the Telephone Consumer Protection Act (“TCPA”) into law, to protect consumers’ consumers’ privacy rights, namely, the right to be left alone from unwanted telemarketing calls. A leading sponsor of the TCPA described unwanted telemarketing calls as “the scourge of modern civilization.” 137 Cong. Rec. 30821 (1991).

4. The TCPA affords protections for people who registered their phone numbers on the National Do Not Call Registry. Specifically, the TCPA provides that each person who receives more than one call on their phone after being registered on the National Do Not Call Registry is entitled to recover a penalty of up to \$500 per call, and up to \$1,500 per call if the TCPA is willfully or knowingly violated. *See* 47 U.S.C. § 227(b)(1)(A); 47 U.S.C. § 227(b)(1)(3); 47 C.F.R. § 64.1200(a).

5. Since 2003, persons who register their cell phone numbers on the DNC List are considered “residential subscribers” for the purpose of 227(c)(5) and the DNC List. *In Re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014, 14039 (2003) (“we will presume wireless subscribers who ask to be put on the national do-not-call list to be ‘residential subscribers.’”)

6. From January 2024 through September 2024, approximately 38.8 billion robocalls were placed in the United States. RobocallIndex.com, YouMail Robocall Index, <https://robocallindex.com/history/time> (last visited Oct. 2, 2024).

7. Decades after the TCPA passed into law, it is still unfortunately the case that “month after month, unwanted telemarketing calls and texts top the list of consumer complaints received by the [Federal Communications] Commission.” *Omnibus TCPA Order*, 30 FCC Rcd. 7961, 7964 (F.C.C. July 10, 2015).

8. In fact, in 2021 alone, there were over five million do-not-call complaints to the FTC about unwanted telemarketing calls. Federal Trade Commission, *FTC Issues Biennial Report to Congress on the National Do Not Call Registry* (Jan. 5, 2022) available at: <https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-issues-biennial-report-congress-national-do-not-call-registry> (last visited Aug. 1, 2023).

9. The private right of enforcement of the TCPA is critical to stopping the proliferation of these unwanted telemarketing calls. For example, while the Federal Communications Commission levied over \$200 million in penalties against telemarketers between 2015 and 2018, it collected less than \$7,000 of that amount. See Sarah Krouse, *The FCC Has Fined Robocallers \$208 Million. It's Collected \$6,790*, THE WALL STREET JOURNAL, March 28, 2019, <https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803>.

### **JURISDICTION AND PARTIES**

10. This Court has jurisdiction over Defendants because Defendants have directed their marketing efforts, including telemarketing, in part, into the State of Missouri, including St. Louis County, Missouri.

11. This Court has personal jurisdiction over Defendants because Defendants transact business in the State of Missouri, conduct marketing in the State of Missouri, and otherwise continuously and systematically transact business in the State of Missouri. In addition, each of Defendant's exchanges, which are similar to unincorporated associations, have policyholders and/or members in the State of Missouri.

12. Starling was (and is) a resident of and a citizen of the State of Texas at all times relevant to this Complaint.

13. At all times relevant to this Complaint, Starling was, and is still, the owner of a cell phone. Her cell phone number is 817-XXX-6140.

14. Starling registered her phone number on the DNC List on or about December 31, 2004, to avoid receiving unwanted telemarketing text messages.

15. Starling's cell phone number is a personal phone number and is not a business line.

16. The monthly bill associated with Starling's phone number is issued in Starling's name, and not in the name of a business.

17. Starling uses her cell phone primarily for residential purposes, such as communicating with friends and family members.

18. Defendants Farmers Insurance Exchange and Fire Insurance Exchange are separate inter-insurance exchanges existing under the laws of California, with their principal places of business in California.

19. Defendants Farmers Insurance and Fire Insurance Exchange are authorized to conduct business in California and throughout the United States, and which market and sell various insurance products in California and throughout the United States.

20. Defendant Farmers Insurance Company, Inc. is an insurance company authorized to conduct business in California and throughout the United States, and which markets and sells various insurance products throughout the United States.

21. Defendants Farmers Insurance Exchange, Fire Insurance Exchange and Farmers Insurance Company, Inc. (collectively "Farmers" or "Defendants") are part of the Farmers Insurance Group, an insurance organization consisting of more than twenty insurance entities, with its principal place of business in California.

22. Farmers' primary business is selling insurance products and services, including, but

not limited to, automobile and homeowners' insurance.

23. Farmers markets its insurance products through a variety of marketing tactics including placing telemarketing text messages.

24. Starling did not provide any form of consent to Defendants to contact her on her cell phone.

**FARMERS' CAPTIVE AGENTS AND  
FARMERS' CONTROL OF ITS CAPTIVE AGENTS' MARKETING**

25. Farmers has agents throughout the United States who market and sell its insurance products.

26. Farmers' insurance agents are captive agents, meaning they are only permitted to sell Farmers' insurance products and cannot sell insurance products that compete with Farmers' insurance products.

27. When a person sends a telemarketing text message concerning the sale of a Farmers insurance policy, that telemarketer is authorized by Farmers to sell only a Farmers' policy of insurance, and no other company's policy of insurance. In other words, a telemarketer sending a text message or placing a call to sell a Farmers insurance policy would only be texting or calling to sell a Farmers insurance policy, and no other insurance company's policies of insurance.

28. On information and belief, Farmers retains the unilateral and absolute right to control the use of its agents' marketing, including, but not limited to, requiring approval before using the Farmers name or logo.

29. On information and belief, any advertising or marketing method to be used by a Farmer's agent is subject to the approval of Farmers.

30. On information and belief, Farmers approval of marketing, including the use of the name Farmers, extends to telemarketing.

31. On information and belief, Farmers approved of the text messages placed to Starling and the texts and calls placed to the putative class members as described in this Complaint.

32. On information and belief, Farmers controls the geographic scope in which its agents may sell Farmers' products, and for which they may receive commissions.

33. On information and belief, Farmers retains the right to instruct its agents to not submit applications for insurance that were obtained from persons whose phone numbers were on the DNC List at the time they were texted or called by Farmers' agents. Furthermore, Farmers has the right to refuse to sell its insurance products to such persons.

34. On information and belief, after its agents contacted persons on the DNC list as described in this Complaint, Farmers sold insurance products to a number of those persons and received premiums from those sales.

35. On information and belief, Farmers at times pays for the marketing efforts of its captive agents.

36. Farmers underwrites the insurance policies marketed by its agents and guarantees the policies.

37. When an agent sells a Farmers insurance policy to a consumer, the premium is paid directly to Farmers. The agent that sold the policy will then receive a commission, which is paid by Farmers to the agent.

### **FARMERS' TEXT MESSAGES TO STARLING**

38. Despite not applying for or requesting insurance from Defendants, Starling began receiving solicitation text messages from Defendants.

39. Starling not only did not provide any form of consent to Defendants or anyone acting on their behalf to contact her, but she was also not in the market for, nor interested in, Defendants' insurance products.

40. Yet, on June 3, 2023, at approximately 11:06 a.m., Starling received a solicitation text message on her cell phone from Defendants. The phone number that appeared on her cell phone was 214-915-2713. The text message stated:

Hi Kimberly, This is Matthew at Todd Henderson Insurance Agency, Inc. I am reaching out before your home insurance renews to try and get you better coverage and save you money. Would you prefer that I text or email your quote to you?

Text STOP texts from this agency, or STOPALL to stop all texts & calls from Farmers.

41. One of Defendants' webpages, <https://www.farmers.com/farmers-quote-texts/>, like the text message to Starling, states, "Reply **STOP** to receiving SMS messages and no longer participate in the Farmers quote program or **STOPALL** to opt-out of all Farmers marketing SMS messages."

42. On June 13, 2023, at approximately 4:25 p.m., Starling received a text message on her cell phone from Defendants. The phone number that appeared on her cell phone was 214-915-2713 and was in the same text message chain as the previous text message. The text message stated:

Hello Kimberly, I'm Matthew, a local Farmers Agent. I am interested in earning your business and working for you. I'll contact you soon about your Home Insurance renewal. In the meantime (sic) I can get a head (sic) start on your quote. Just text back "yes." If you're (sic) not interested in my assistance, text back "stop."

43. On June 18, 2023, at approximately 4:30 p.m., Starling received a text message on her cell phone from Defendants. The phone number that appeared on her cell phone was 214-915-

2713 and was in the same text message chain as the previous text message. The text message stated:

Hi Kimberly, it's Matt. Let's talk home insurance renewal rates. Happy with the current rate? If not, I'd love a chance to earn your business. Text or email for your quote?

44. Mr. Henderson's e-mail address is rhenderson2@farmersagent.com. Mr. Henderson's e-mail signature block states, "Todd Henderson Farmers Insurance" and includes Defendants' logo.

45. Defendants' website includes a profile for its captive agent Todd Henderson. The web address for this page is <https://agents.farmers.com/tx/flower-mound/rtodd-henderson/>.

46. Defendants' webpage for Mr. Henderson includes Defendants' logo and describes Mr. Henderson as a "Farmers Insurance Agent in Flower Mound, Texas" who has the "knowledge and experience to help you better understand your coverage options – whether that's auto, home, renters, business insurance and more."

47. Mr. Henderson's profile webpage also states that he is "your local Farmers® agent in Flower Mound, Texas."

48. Mr. Henderson's profile page also includes a blue button labeled "Make an Appointment." Upon clicking the button, the user can request an appointment after providing information and answering various questions. One of the questions asks, "Already a Farmers customer?" Another option asks the user to check the box of "Farmers products that I am interested in discussing."

49. The disclaimer included before the option to send the appointment request states, "We sometimes reach out to consumers by call and/or text to provide helpful information about

products or services. By clicking ‘Submit’ you consent to marketing calls and/or texts made to you on behalf of my agency or Farmers® Insurance entities . . . .”

50. Mr. Henderson’s LinkedIn profile states, “R. Todd Henderson Farmers Insurance” and “Farmers Insurance Agency in Flower Mound, Texas.”

51. Notably, Starling never provided Defendants, nor Mr. Henderson, any form of consent to contact her on her cell phone via text message or by any other means.

52. Like Starling, another consumer also received unwanted text messages from Defendants’ same captive agent, and made a complaint, stating, “Stop sending me spam texts. Not appreciated. Grow your business like a respectable person.”

#### **DIRECT AND VICARIOUS LIABILITY**

53. Without the benefit of discovery, and because Defendants disclosed their identity in the telemarketing calls and text messages at issue, Starling assumes Defendants’ agents directly sent the text messages at issue.

54. However, if some or all the text messages were made by third-party/parties on behalf of Defendants, in the alternative, Defendants are vicariously liable for those text messages.

55. On May 9, 2013, the FCC determined that telemarketers like Defendants could not avoid liability by outsourcing telemarketing:

[A]llowing the seller to avoid potential liability by outsourcing its telemarketing activities to unsupervised third parties would leave consumers in many cases without an effective remedy for telemarketing intrusions. This would particularly be so if the telemarketers were judgment proof, unidentifiable, or located outside of the United States, as is often the case. Even where third-party telemarketers are identifiable, solvent, and amenable to judgment limiting liability to the telemarketer that physically places the call would make enforcement in many cases substantially more expensive and less efficient, since consumers (or law enforcement agencies) would be required to sue each marketer separately in order to obtain relief. As the FTC noted, because “[s]ellers may have thousands of

“independent” marketers, suing one or a few of them is unlikely to make a substantive difference for consumer privacy.

*In re: Dish Network, LLC*, 28 F.C.C. Rcd. 6574 at 6588 (May 9, 2013) (internal citations omitted).

56. Moreover, the May 2013 FCC ruling rejected a narrow view of TCPA liability, including the assertion that a seller’s liability requires a finding of formal actual agency and immediate direction and control over third parties who place a telemarketing call. *Id.* at 6587 n. 107.

57. The evidence of circumstances pointing to apparent authority on behalf of the telemarketer “should be sufficient to place upon the seller the burden of demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller’s authorized agent.” *Id.* at 6593.

58. If Defendants directly placed the text messages at issue to Starling, Defendants are directly liable for the sending of those text messages.

59. However, Defendants may have hired, encouraged, permitted, and enjoyed the benefits of mass telemarketing by third-party telemarketers.

60. If Defendants did not directly send the text messages to Starling, Defendants’ third-party telemarketers had actual and/or apparent authority to act on behalf of Defendants.

61. Likewise, Defendants also ratified its agents’ violations of the TCPA by accepting insurance premiums from sales imitated by unlawful telemarketing communications.

62. Defendants controlled or had the right to control the marketing activities of those acting on its behalf.

63. Defendants acted as a principal to telemarketing agent(s) who were acting on their behalf.

64. Defendants are not permitted under the law to outsource and contract their way out of liability by directing and benefitting from their captive agents' TCPA violations.

65. For the counts identified below, if Defendants directly placed the text messages at issue, they are directly liable. Alternatively, to the extent any text messages were made by a third-party agent(s) acting on Defendants' behalf, Defendants are vicariously liable for those unlawful text messages.

### **Class Allegations**

66. Pursuant to Missouri Supreme Court Rule 52.08, Starling brings this lawsuit as a class action on behalf of herself, and all others similarly situated. This action satisfies the requirements of Rule 52.08.

67. Starling seeks to represent the following class:

From October 8, 2020 until the date of class certification, all persons: (1) who received two or more calls or text messages from Todd Henderson Insurance Agency, Inc and/or R. Todd Henderson during a 12-month period in connection with the marketing of Farmers' products or services; (2) whose number was registered on the Do Not Call Registry for more than 30 days at the time the calls were received; and (3) whose number is registered to an individual and not a business.

The class consists of 8,039 class members identified in the file previously produced to Plaintiff as Henderson\_texts\_2023\_revised (Agency MVP).xlsx.

Excluded from the Class are Plaintiff's counsel, Farmers, as well as the officers and directors of Farmers and the immediate family members of such persons, and the members of the Missouri judiciary.

68. Starling reserves the right to add administrative subclasses, or to amend the definition of the proposed class, during the lawsuit proceedings.

69. The members of the proposed class are so numerous that joinder of all members is impracticable. Starling reasonably believes that hundreds or thousands of people have been harmed

by Defendants' actions. The phone numbers of the members of the proposed class are readily identifiable through records available to Defendants or those acting on its behalf.

70. Most members of the proposed class have suffered damages in an amount such that it would make filing separate lawsuits by individual members economically infeasible.

71. On information and belief, Defendants have called and texted, and continues to call and text people whose numbers are registered on the DNC List. It is reasonable to expect that Farmers will continue to place such calls and text messages, absent this lawsuit.

72. Common questions of law and fact exist as to all members of the proposed class and predominate over any questions affecting only individual members. The questions of law and fact common to the proposed class include, but are not limited to:

- a. Whether Defendants' conduct of placing calls and text messages to persons whose phone numbers are registered on the DNC List violates 47 U.S.C. § 227(c);
- b. Whether the text messages and calls were "solicitations" as defined by the TCPA;
- c. whether Defendants maintained and implemented legally sufficient protocols for obtaining consumer "consent" to place telemarketing calls or messages to numbers on the DNC;
- d. Whether Defendants' conduct violates the rules and regulations implementing the TCPA; and,
- e. Whether Starling and the putative class members are entitled to increased damages for each violation based on the willfulness of Defendants' conduct.

73. Starling's claims are typical of the claims of the proposed class members because her claims arise from the same practice that gives rise to the claims of the members of the proposed class and are based on the same legal theories.

74. Starling and her counsel will fairly and adequately protect the interests of the members of the proposed class. Starling's interests do not conflict with the interests of the proposed class she seeks to represent. Starling has retained lawyers who are competent and experienced in class action litigation, TCPA litigation and consumer law.

75. Starling's counsel will vigorously litigate this case as a class action, and Starling and her counsel are aware of their responsibilities to the putative members of the class and will discharge those duties.

76. A class action is superior to all individual lawsuits for this controversy. Joinder of all proposed members of the proposed class in one action is impracticable if not impossible and prosecuting hundreds or thousands of individual actions is not feasible. The size of the individual claims is likely not large enough to justify filing a separate action for each claim. For many, if not most, members of the proposed class, a class action is the only procedural mechanism that will allow recovery. Even if members of the proposed class had the resources to pursue individual litigation, that method would be unduly burdensome to the courts. Individual litigation could also result in inconsistent adjudications.

77. In contrast, a class action is superior in that it will benefit the court and litigating parties through efficiency, economy of scale and unitary adjudication resulting from supervision of the litigation by a single court.

78. Questions of law and fact, particularly the propriety of placing text messages and calls to phone numbers on the DNC List, predominate over questions affecting only individual members.

79. Defendants have acted or refused to act on grounds that apply generally to the class, making final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

**Count I - Violations of the Telephone Consumer Protection Act ("TCPA"),  
47 U.S.C. § 227(c) *et seq.* (National DNC List Violations)**

80. Starling incorporates by reference the allegations of the previous paragraphs as if fully stated in this Count.

81. The TCPA provides that is a violation of the law for a person whose phone number is registered on the DNC List to receive more than one call on their phone “within any 12-month period by or on behalf of the same entity.” *See* 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. § 64.1200(c)(ii).

82. The penalty for each call placed in violation of the TCPA’s restrictions on calling phone numbers registered on the DNC List is up to \$500 per call and up to \$1,500 per call if the violation is determined to be willful. *See* 47 U.S.C. § 227(c)(5).

83. In addition, the TCPA allows the Court to enjoin Defendants’ violations of the TCPA’s regulations prohibiting calls to phone numbers registered on the National Do-Not-Call Registry. *See* 47 U.S.C. §§ 227(c)(5)(A).

84. By placing calls and texts to Starling and the putative class members’ phone numbers, which were registered on the DNC List, Defendants violated the TCPA, including, but not limited to, 47 U.S.C. §§ 227(c)(1) and the TCPA’s corresponding regulations.

85. Defendants and/or those acting on its behalf knew or should have known that Starling’s and the putative class members’ phone numbers were registered on the DNC List.

86. Defendants and/or those acting on its behalf willfully violated the TCPA when placing the text messages and calls to Starling’s and the putative class members’ phones.

87. Starling and the putative class members are entitled to damages of up to \$500.00 per violation for each call made by Defendants and/or those acting on its behalf that the Court finds violates the TCPA and up to \$1,500.00 per violation if the Court finds that Defendants and/or those acting on its behalf willfully violated the TCPA.

### **PRAYER FOR RELIEF**

WHEREFORE Plaintiff Kimberly Starling, individually, and on behalf of all others similarly situated, request that the Court:

a. Enter an order pursuant to Missouri Supreme Court Rule 52.08, certifying the proposed class, appointing Starling as the class representative, and appointing Starling's counsel as class counsel;

b. Enter judgment in favor of Starling and the DNC List Class members for all damages and other relief available under the TCPA, 47 U.S.C. § 227(c), including injunctive relief, statutory damages of \$500 per violation, and up to \$1,500 per violation if Defendants willfully violated the TCPA;

c. Enter a judgment in favor of Starling and the Class that enjoins Defendants from violating the TCPA's provisions and regulations;

d. Enter judgment in favor of Starling and the Class for all applicable pre-judgment and post-judgment interest amounts;

e. Enter judgment in favor of Starling and the Class for all costs; and,

f. Award Starling and the Class members such further and other relief the Court deems just and appropriate.

### **DEMAND FOR JURY TRIAL**

Please take notice that Kimberly Starling demands a jury trial.

Dated: January 6, 2026

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