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Attorneys for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

KIMBERLY STARLING, individually
and on behalf of others similarly situated,

Plaintiff,

v.

FARMERS INSURANCE EXCHANGE,
FARMERS INSURANCE COMPANY,
INC., and FIRE INSURANCE
EXCHANGE,

Defendants.

Case No.: 2:24-cv-08644

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 1991, 18 F.C.C. Rcd. 14014, 14039 (2003) (“we will presume wireless subscribers
2 who ask to be put on the national do-not-call list to be ‘residential subscribers.’”)

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

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

10 8. In fact, in 2023 alone, there were more than two million do-not-call
11 complaints to the FTC about unwanted telemarketing calls. Federal Trade
12 Commission (“FTC”), *FTC Issues Biennial Report to Congress on the National Do*
13 *Not Call Registry* (Jan. 8, 2024) available at: [https://www.ftc.gov/news-](https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-issues-biennial-report-congress-national-do-not-call-registry)
14 [events/news/press-releases/2024/01/ftc-issues-biennial-report-congress-national-do-](https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-issues-biennial-report-congress-national-do-not-call-registry)
15 [not-call-registry](https://www.ftc.gov/news-events/news/press-releases/2024/01/ftc-issues-biennial-report-congress-national-do-not-call-registry) (last visited October 4, 2024).

16 9. The private right of enforcement of the TCPA is critical to stopping the
17 proliferation of these unwanted telemarketing calls. For example, while the Federal
18 Communications Commission (“FCC”) levied more than \$200 million in penalties
19 against telemarketers between 2015 and 2018, it collected less than \$7,000 of that
20 amount. *See* Sarah Krouse, *The FCC Has Fined Robocallers \$208 Million. It’s*
21 *Collected \$6,790*, THE WALL STREET JOURNAL, March 28, 2019,
22 [https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803)
23 [6-790-11553770803](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803).

24 **JURISDICTION AND VENUE**

25 10. This Court has subject matter jurisdiction over the TCPA claims in this
26 action under 28 U.S.C. § 1331, which grants this Court original jurisdiction of all
27 civil actions arising under the laws of the United States.

28 11. This Court has personal jurisdiction over Defendants because they are

1 headquartered in California, transact business in California, and sell various
2 insurance-related products and services in California.

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

5 13. Venue is proper under 28 U.S.C. §§ 1391(b)(2) as a substantial portion
6 of the events giving rise to the claims herein arose in this District.

7 **PARTIES**

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

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

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

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

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

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

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

26 21. Defendants are part of the Farmers Insurance Group, an insurance
27 organization consisting of more than 20 insurance entities, with its principal place of
28 business in California.

1 22. Farmers' primary business is selling insurance products and services,
2 including, but not limited to, automobile and homeowners' insurance.

3 23. Farmers markets their insurance products through a variety of marketing
4 tactics, including sending telemarketing text messages.

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

7 **FARMERS' CAPTIVE AGENTS AND**
8 **FARMERS' CONTROL OF THEIR CAPTIVE AGENTS' MARKETING**

9 25. Defendants have agents throughout the United States who market and
10 sell their insurance products.

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

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

20 28. On information and belief, Defendants retain the unilateral and absolute
21 right to control the use of their agents' marketing, including, but not limited to,
22 requiring approval before using Farmers' name or logo.

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

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

27 31. On information and belief, Defendants approved of the text messages
28 placed to Starling and the texts and calls placed to the putative class members as

1 described in this Complaint.

2 32. On information and belief, Defendants control the geographic scope in
3 which their agents may sell their products, and for which these agents may receive
4 commissions.

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

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

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

15 36. Farmers underwrites the insurance policies marketed by their agents and
16 guarantees the policies.

17 37. When an agent sells a Farmers' insurance policy to a consumer, the
18 premium is paid directly to Farmers. The agent that sold the policy then receives a
19 commission, which is paid by Farmers to the agent.

20 **FARMERS' TEXT MESSAGES TO PLAINTIFF**

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

23 39. Starling did not provide any form of consent to Defendants or anyone
24 acting on their behalf to contact her, and was also not in the market for, or interested
25 in, Defendants' insurance products.

26 40. Yet, on June 3, 2023, at approximately 11:06 a.m., Plaintiff received a
27 solicitation text message on her cell phone from Defendants. The phone number that
28 appeared on her cell phone was 214-915-2713 and the text message stated as follows:

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

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

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

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

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

20 43. On June 18, 2023, at approximately 4:30 p.m., Plaintiff received a text
21 message on her cell phone from Defendants. The phone number that appeared on her
22 cell phone was 214-915-2713 and was in the same text message chain as the previous
23 text message. The text message stated:

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

27 44. Todd Henderson's ("Mr. Henderson") e-mail address is
28 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 their captive agent, Todd

1 Henderson. The web address for this page is [https://agents.farmers.com/tx/flower-](https://agents.farmers.com/tx/flower-mound/rtodd-henderson/)
2 [mound/rtodd-henderson/](https://agents.farmers.com/tx/flower-mound/rtodd-henderson/).

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

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

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

14 49. The disclaimer included before the option to send the appointment
15 request states, "We sometimes reach out to consumers by call and/or text to provide
16 helpful information about products or services. By clicking 'Submit' you consent to
17 marketing calls and/or texts made to you on behalf of my agency or Farmers®
18 Insurance entities"

19 50. Mr. Henderson's LinkedIn profile states, "R. Todd Henderson Farmers
20 Insurance" and "Farmers Insurance Agency in Flower Mound, Texas."

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

24 52. Like Starling, another consumer also received unwanted text messages
25 from Defendants' same captive agent, and made a complaint, stating, "Stop sending
26 me spam texts. Not appreciated. Grow your business like a respectable person."
27
28

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 directly sent the text messages at issue.

54. However, if some or all the text messages or calls 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

1 of the telemarketer “should be sufficient to place upon the seller the burden of
2 demonstrating that a reasonable consumer would not sensibly assume that the
3 telemarketer was acting as the seller’s authorized agent.” *Id.* at 6593.

4 58. If Defendants directly sent the text messages at issue to Starling and the
5 putative class members, Defendants are directly liable for the sending of those text
6 messages.

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

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

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

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

17 63. Defendants acted as principals to telemarketing agent(s) who were acting
18 on their behalf.

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

22 65. For the count identified below, if Defendants directly sent the text
23 messages and/or calls at issue to Starling and the putative class members, they are
24 directly liable. Alternatively, to the extent any text messages and/or calls were
25 sent/placed by a third-party agent(s) acting on Defendants’ behalf, Defendants are
26 vicariously liable for those unlawful communications.

27 **CLASS ALLEGATIONS**

28 66. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3),

1 Plaintiff brings this lawsuit as a class action on behalf of herself and all others
2 similarly situated. This action satisfies the requirements of Rule 23.

3 67. Starling seeks to represent the following class (the “Class”):

4 For the four-year period prior to the filing of this lawsuit to the date of
5 Class certification, all persons:

6 (1) who received two or more calls or text messages during a 12-month
7 period in connection with the marketing of Farmers’ products or
8 services;

9 (2) whose number was registered on the Do Not Call Registry for more
10 than 30 days at the time the calls were received; and

11 (3) whose number is registered to an individual and not a business.

12 The class is limited to calls or texts placed by or on behalf of Todd
13 Henderson Insurance Agency, Inc and/or R. Todd Henderson.

14 68. Starling reserves the right to add administrative subclasses, or to amend
15 the definition of the proposed Class, as this lawsuit proceeds.

16 69. The members of the proposed Class are so numerous that joinder of all
17 members is impracticable. Starling reasonably believes that hundreds or thousands of
18 people have been harmed by Defendants’ actions. The phone numbers of the
19 members of the proposed Class are readily identifiable through records available to
20 Defendants or those acting on their behalf.

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

24 71. On information and belief, Defendants have called and texted, and
25 continue to call and text, people whose numbers are registered on the DNC List. It is
26 reasonable to expect that Farmers will continue to place such calls and text messages,
27 absent this lawsuit.
28

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

5 a. Whether Defendants' conduct of placing calls and text messages to
6 persons whose phone numbers are registered on the DNC List violates 47 U.S.C. §
7 227(c);

8 b. Whether the text messages and calls were "solicitations," as defined by
9 the TCPA;

10 c. Whether Defendants maintained and implemented legally sufficient
11 protocols for obtaining consumer "consent" to place telemarketing calls or send text
12 messages to numbers on the DNC List;

13 d. Whether Defendants' conduct violates the rules and regulations
14 implementing the TCPA; and

15 e. Whether Plaintiff and the putative Class members are entitled to
16 increased damages for each violation based on the willfulness of Defendants'
17 conduct.

18 73. Plaintiff's claims are typical of the claims of the proposed Class
19 members because her claims arise from the same practice that gives rise to the claims
20 of the members of the proposed Class and are based on the same legal theories.

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

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

1 on calling phone numbers registered on the DNC List is up to \$500 per call and up to
2 \$1,500 per call if the violation is determined to be willful. *See* 47 U.S.C. § 227(c)(5).

3 83. In addition, the TCPA allows this Court to enjoin Defendants' violations
4 of the TCPA's regulations prohibiting calls to phone numbers registered on the DNC
5 List. *See* 47 U.S.C. §§ 227(c)(5)(A).

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

10 85. Defendants and/or those acting on their behalf knew, or should have
11 known, that Starling's and the putative Class members' phone numbers were
12 registered on the DNC List.

13 86. Defendants and/or those acting on their behalf willfully violated the
14 TCPA when placing the text messages and calls to Starling's and the putative Class
15 members' phones.

16 87. Starling and the putative Class members are entitled to damages of up to
17 \$500 per violation for each call made by Defendants and/or those acting on their
18 behalf that the Court finds violates the TCPA and up to \$1,500 per violation if the
19 Court finds that Defendants and/or those acting on their behalf willfully violated the
20 TCPA.

21 **PRAYER FOR RELIEF**

22 WHEREFORE Plaintiff, individually, and on behalf of all others similarly
23 situated, requests that the Court:

24 a. Enter an order pursuant to Federal Rule of Civil Procedure 23(a), (b)(2)
25 and (b)(3), certifying the proposed Class, appointing Plaintiff as the Class
26 representative, and appointing Starling's counsel as class counsel;

27 b. Enter judgment in favor of Plaintiff and the Class members for all
28 damages and other relief available under the TCPA, 47 U.S.C. § 227(c), including

1 injunctive relief, statutory damages of up to \$500 per violation, and up to \$1,500 per
2 violation if Defendants willfully violated the TCPA;

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

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

7 e. Enter judgment in favor of Plaintiff and the Class for all costs; and

8 f. Award Plaintiff and the Class members such further and other relief the
9 Court deems just and appropriate.

10 **DEMAND FOR JURY TRIAL**

11 Please take notice that Plaintiff demands a jury trial.

12 Dated: October 8, 2024

Respectfully submitted,

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