

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

DIANNE RICE-REDDING, RICKY  
COLEMAN, KEN JOHANSEN, RITA  
JOHANSEN, and ALVINA HAILE-  
RECIO, individually and on behalf of  
all others similarly situated,  
Plaintiffs,

v.

NATIONWIDE MUTUAL  
INSURANCE COMPANY,  
Defendant,

Case No. 1:16-cv-03634-TCB

**CLASS ACTION**

**DEMAND FOR JURY TRIAL**

**THIRD AMENDED CLASS ACTION COMPLAINT**

Plaintiffs Dianne Rice-Redding (“Rice-Redding”) and Ricky Coleman (“Coleman”) (collectively “the Variable Plaintiffs”); and Ken Johansen, Rita Johansen (collectively, “the Johansens”) and Alvina Haile-Recio (“Haile-Recio”) (with the Johansens, “the non-Variable Plaintiffs”), individually and on behalf of all others similarly situated, allege on personal knowledge, investigation of their counsel, and on information and belief as follows:

**NATURE OF ACTION**

1. This case involves a scheme by Nationwide Mutual Insurance Company (“Nationwide”) and its agents to market its services in violation of the

Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (hereinafter referred to as the “TCPA”).

2. Nationwide is engaged in a vast and sophisticated marketing regime based upon outbound telemarketing calls.

3. Nationwide uses a dialing system to initiate some telemarketing calls itself. Nationwide called one or more of the Plaintiffs for marketing purposes, using its dialing system.

4. Nationwide has also engaged, and continues to engage, third party lead generators to make telemarketing calls. Some such calls were made through a large advertising company, Universal McCann (“UM”), in order to attempt to insulate Nationwide from liability for such calls by claiming that UM and the companies UM hired for Nationwide were “independent contractors” and as such Nationwide should not be held liable.

5. Though it professes to have little idea where the calls originated, Nationwide has instituted call centers to accept “live” transfers (also called “warm” or “hot” transfers) of telemarketing calls in order to try to sell its insurance products. Many of these telemarketing calls originated with prerecorded messages, and were placed without sufficient consent or permission.

6. Moreover, Nationwide has not instituted sufficient safeguards to ensure that calls that its vendors make – or calls it participates in – are made in compliance with the TCPA.

7. Additionally, Nationwide commissioned (and contributed to funding) its agents to hire Variable Marketing (a/k/a Instant Insurance Marketing a/k/a Instant Insurance Transfers), whose entire business model was prerecorded telemarketing using an autodialer in violation of the TCPA to generate insurance leads.

8. Nationwide and its agents delegated their marketing duties to Variable and ratified the conduct of Variable by accepting the referrals and sales generated by Variable's calls. Nationwide also actively participated in the telemarketing calls through its own actions and the actions of its agents.

9. Nationwide violated the TCPA by hiring Variable to contact the Variable Plaintiffs and similarly situated Class Members on their cellular telephones for non-emergency purposes via an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), and/or by using “an artificial or prerecorded voice” as described in 47 U.S.C. § 227(b)(1)(A), without the Variable Plaintiffs' and Class Members' prior express consent within the meaning of the TCPA. These calls also violated 47 U.S.C. § 227(b)(1) because they did not state

the entity responsible for initiating the calls, and § 227(b)(2) because they did not state the telephone number of the business making the call and did not include a reasonable or compliant mechanism to opt out.

10. Nationwide also violated the TCPA by itself making, or causing to be made, non-Variable telemarketing calls to Plaintiff Johansen, Plaintiff Haile-Recio, and Class Members on their telephone lines using an “automatic telephone dialing system” or “artificial or prerecorded voice” as described in 47 U.S.C. § 227(b)(1), without Mr. Johansen’s, Ms. Haile-Recio’s, and Class Members’ prior express consent within the meaning of the TCPA, in addition to violating the TCPA’s do-not-call provisions.

11. Plaintiffs bring this action for statutory damages and injunctive relief under the TCPA, all arising from the illegal actions of Nationwide, who commissioned these campaigns in which prerecorded messages were used to solicit insurance customers, and benefitted from those campaigns by acquiring potential customers who might purchase insurance policies from Nationwide.

### **JURISDICTION AND VENUE**

12. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“hereinafter referred to as CAFA”), codified as 28 U.S.C. § 1332(d)(2). The matter in controversy exceeds \$5,000,000, in the aggregate,

exclusive of interest and costs, as each member of the proposed Class of at least tens of thousands is entitled to up to \$1,500.00 in statutory damages for each call that has violated the TCPA. Further, Plaintiffs allege a national class, which will result in at least one Class member from a different state.

13. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227 *et seq.*

14. This Court has personal jurisdiction over Nationwide because the conduct at issue in the case occurred, among other locations, in the State of Georgia, the company is licensed to conduct business in the State of Georgia. As such, it has established minimum contacts showing that it has purposefully availed itself of the resources and protection of the State of Georgia.

15. Venue is proper in the United States District Court for the Northern District of Georgia because Nationwide is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced, and because Nationwide's contacts with this District are sufficient to subject it to personal jurisdiction.

### **PARTIES**

16. Plaintiff Dianne Rice-Redding is, and at all times mentioned herein was, an individual citizen of the State of Georgia, who resides in Atlanta, Georgia.

17. Plaintiff Ricky Coleman is, and at all times mentioned herein was, an individual citizen of the State of Georgia, who resides in Atlanta, Georgia.

18. Plaintiff Ken Johansen is, and at all times mentioned herein was, an individual citizen of the State of Ohio, who resides in Dublin, Ohio.

19. Plaintiff Rita Johansen is, and at all times mentioned herein was, an individual citizen of the State of Ohio, who resides in Dublin, Ohio.

20. Plaintiff Alvina Haile-Recio is, and at all times mentioned herein was, an individual citizen of the State of Washington, who resides in Renton, Washington.

21. Defendant Nationwide is the parent company of a series of interrelated insurance and financial services companies. Nationwide is an Ohio corporation with corporate headquarters in Columbus, Ohio.

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

**The TCPA's Restrictions on Calls to Cellular Telephones**

22. In 1991, Congress enacted the TCPA<sup>1</sup> in response to a growing number of consumer complaints regarding certain telemarketing practices.

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<sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

23. The TCPA regulates, among other things, the use of automatic telephone dialing equipment, or “autodialers.”

24. Specifically, the plain language of section 227(b)(1)(A)(iii) of the TCPA prohibits making any call to a wireless number using an autodialer or an artificial or prerecorded voice, in the absence of an emergency or the prior express consent of the called party.

25. According to findings by the FCC, the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

26. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.<sup>2</sup>

27. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number are

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<sup>2</sup> *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115 (¶ 165) (2003).

permitted only if the calls are made with the “prior express consent” of the called party.<sup>3</sup>

### **The TCPA’s Restrictions on Calls to Residential Telephone Numbers**

28. Through the TCPA, Congress outlawed telemarketing via unsolicited automated or prerecorded telephone calls (“robocalls”), finding:

[R]esidential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy...

Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call[,] . . . is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

*Id.* § 2(10) and (12).

29. The TCPA prohibits persons from initiating any telephone call to a 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 or is exempted by rule or order of the FCC. 47 U.S.C. § 227(b)(1)(B); *see also* 47 C.F.R. § 64.1200(a)(2).

### **The TCPA’s Restrictions on Calls to Numbers on the National Do Not Call Registry**

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<sup>3</sup> *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-278, Declaratory Ruling, 23 FCC Rcd 559, 564-65 (¶ 10) (2008) (“2008 FCC Declaratory Ruling”).

30. The national Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2). A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*

31. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to subscribers to the Registry. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).

32. The TCPA and implementing regulations require the implementation of written procedures, training and other items to ensure compliance with the Do Not Call provisions of the TCPA. Nationwide fell short in complying with these requirements. 47 C.F.R. § 64.1200(c), (d). For example, but not by limitation, the TCPA requires that Nationwide have procedures that require that both the telemarketer and Nationwide be identified during telemarketing calls, 47 C.F.R. § 64.1200(d)(4), requires that any entity making calls for telemarketing purposes have a written policy for maintaining a do not call list, 47 C.F.R. § 64.1200(d)(1), and requires that Nationwide ensure that vendors adequately train their employees in Do Not Call compliance. Discovery shows that Nationwide vendors did not have written policies for compliance with the DNC portions of the TCPA, and that

Nationwide instituted zero requirements that its vendors identify themselves and Nationwide during calls, much less have a mechanism by which opt outs may happen. Nationwide does not make sure that it has a signed, written agreement between Nationwide (the “seller”) and the consumer, which states that the consumer agrees to be contacted by this seller and includes the telephone number to which calls may be placed. 47 C.F.R. § 64.1200(c)(2)(ii).

33. A person whose number is on the Registry or has asked that call stop, and who has received more than one telephone call within any twelve-month period by or on behalf of the same entity in violation of the TCPA, can sue the violator and seek statutory damages and injunctive relief. 47 U.S.C. § 227(c)(5).

34. The regulations exempt from liability a caller who has obtained the subscriber’s signed, written agreement to receive telephone solicitations from the caller. *See* 47 C.F.R. § 64.1200(c)(2)(ii). That agreement must also include the telephone number to which the calls may be placed. *Id.*

35. Although certain portions of the TCPA permit “electronic” signatures on consent documents, the portions of the TCPA that permit such are explicit that electronic signatures must comply with applicable laws such as the E-Sign Act. *See* 47 C.F.R. § 64.1200(f)(8). Upon information and belief, based upon discovery so

far, Nationwide did not comply with E-Sign as to *any* calls it, or its vendors, have ever made.

### **FACTUAL ALLEGATIONS**

#### **Variable Marketing, LLC**

36. Until it closed down in late 2013, Variable Marketing, LLC, operated a “lead generator” business on behalf of several insurance companies, including Nationwide.

37. As part of its lead generation operation, in 2012 and 2013, Variable made tens of millions of automated telephone calls. These calls were made using a true sequential dialing system, where phone numbers were automatically dialed in succession.

38. Each outbound Variable call contained a prerecorded message informing the recipient of an opportunity to save on their car insurance.

39. As such, each of the calls made by Variable on behalf of Nationwide to cellular telephones violated the TCPA by using an automated telephone dialing system and utilized a prerecorded voice without the prior express consent of the recipient of the call.

40. Variable’s business model consisted of selling “live leads” to insurance agents, including Nationwide agents. When a consumer answered or

returned the automated call, a Variable representative recorded the consumer's name, address, phone number, vehicle information, homeowner status, and driving record to develop an insurance quote. The screener then "matched" the caller with an insurance agent pursuant to standard contracts with each agent that affirmed the agent had Nationwide's permission to hire Variable to make calls on behalf of Nationwide.

41. Variable maintained a database of leads transferred to agents. (hereafter "the Variable database"). This database contained all of the personal and demographic information obtained by Variable's screener and specified the agent to whom Variable transferred the lead. According to Variable's records, Variable transferred leads from calls to more than 20,000 unique wireless numbers to Nationwide agents.

**The Smith Action**

42. On October 4, 2013, a class action complaint was filed in the United States District Court for the Northern District of Illinois on behalf of all persons who received an automated telephone call on their cellular telephones from Variable. *Matejovich et al. v. American Automobile Association, Inc. et al.*, No. 1:13-cv-7149. Nationwide was named as a defendant in the *Matejovich* action.

43. On November 18, 2013, the *Matejovich* action was transferred and consolidated with *Smith v. State Farm Mutual Insurance Company*, No. 1:13-cv-2018 (N.D. Ill.) (hereafter “the *Smith* action”). On February 4, 2014, the plaintiffs filed a consolidated master class action complaint, naming Nationwide as a defendant, along with State Farm and Farmers Insurance. Dkt. No. 111.

44. On February 25, 2014, Nationwide, along with the other insurance company defendants, filed a motion to dismiss the consolidated complaint. Dkt. No. 122.

45. On August 11, 2014, the court in the *Smith* case granted the motion to dismiss as to Nationwide and Farmers, but denied it as to State Farm. Dkt. No. 146. With regard to Nationwide, the Court in *Smith* held that the FCC Ruling laying out the standard for vicarious liability for telemarketing calls was binding on the court. Dkt. No. 146, at 8-12. However, the Court concluded that the complaint did not assert sufficient facts to make out a plausible claim that Variable was the agent of Nationwide with regard to the calls. *Id.* at 15-20. As the case proceeded against State Farm, the *Smith* plaintiffs had no opportunity to challenge the dismissal of Nationwide from the case. *See, e.g., Briehler v. City of Miami*, 926 F.2d 1001, 1002 (11th Cir. 1991) (“An order dismissing a complaint is not final and appealable unless the order holds that it dismisses the entire action or that

the complaint could not be saved by amendment.”); *Jones v. U.S. Dept. of Housing and Urban Development*, 46 F.3d 1133 (7th Cir. 1994) (“An order dismissing some defendants and leaving others does not constitute a final, appealable order.”).

46. The class claims pled herein were tolled during the pendency of the *Smith* action.

47. During the course of the *Smith* action, the plaintiffs obtained the Variable database of leads transferred to insurance agents, including to Nationwide agents. *See* ¶ 33, *supra*. This database—which was not available to the plaintiffs at the motion to dismiss stage—unquestionably shows that Variable provided live leads to Nationwide agents, and that Nationwide received a benefit from those transfers in the form of opportunities to write policies stemming from the contacts.

48. In addition, the *Smith* plaintiffs deposed Variable’s corporate representative, who testified that, among other things, Variable acted as an approved vendor for Nationwide. As part of that corporate-approved relationship, Nationwide invited Variable to one of its annual conferences and suggested that its agents hire Variable.

### **Plaintiff Rice-Redding**

49. Plaintiff Rice-Redding is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

50. According to the Variable database, Plaintiff Rice-Redding received a call on her cellular telephone, number 678-860-XXXX, on November 8, 2012.

51. Prior to this contact, Plaintiff Rice-Redding had no contact with Nationwide, and had never been (and has never been) a Nationwide customer.

52. According to the Variable database, Plaintiff Rice-Redding was transferred to the Michelle Allen Agency, Inc., a Nationwide insurance agent located in Villa Rica, Georgia.

53. Upon being transferred to the Allen Agency, Plaintiff Rice-Redding received a quote for automobile insurance to be underwritten by Nationwide.

54. Plaintiff Rice-Redding did not provide prior express consent to receive this call.

55. Plaintiff Rice-Redding was harmed by these calls because they were unwelcome intrusions on her privacy that occupied her telephone line from legitimate communications and depleted her cellular telephone battery.

**Plaintiff Coleman**

56. Plaintiff Coleman is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

57. According to the Variable database, Plaintiff Coleman received a call on his cellular telephone, number 678-665-XXXX, on November 12, 2012.

58. Prior to this contact, Plaintiff Coleman had no contact with Nationwide, and had never been (and has never been) a Nationwide customer.

59. According to the Variable database, Plaintiff Coleman was transferred to Marcellys Cosme, an associate agent with the Nighbert Agency, a Nationwide insurance agent located in Marietta, Georgia.

60. Upon being transferred to the Mr. Cosme at the Nighbert agency, Plaintiff Coleman received a quote for automobile insurance to be underwritten by Nationwide.

61. Plaintiff Coleman did not provide prior express consent to receive this call.

62. Plaintiff Coleman was harmed by these calls because they were unwelcome intrusions on his privacy that occupied his telephone line from legitimate communications and depleted his cellular telephone battery.

### **NATIONWIDE'S LIABILITY FOR THE VARIABLE CALLS**

#### **Nationwide and its Agents' Marketing Arrangement with Variable**

63. Nationwide is, and at all times mentioned herein was, a "person," as defined by 47 U.S.C. § 153(39).

64. The Federal Communication Commission has instructed that sellers such as Nationwide may 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 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 effective 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.”

*May 2013 FCC Ruling*, 28 FCC Rcd at 6588 (¶ 37) (internal citations omitted).

65. In its January 4, 2008 ruling, the FCC reiterated that a company on whose behalf a telephone call is made bears the responsibility for any violations. *Id.* (specifically recognizing “on behalf of” liability in the context of an autodialed or prerecorded message call sent to a consumer by a third party on another entity’s behalf under 47 U.S.C. § 227(b)).

66. The FCC has explained that its “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *See In re Rules & Regulations Implementing the TCPA*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12397 (¶ 13) (1995).

67. Variable made the autodialed and prerecorded message calls described herein “on behalf of” Nationwide within the meaning of the FCC’s Declaratory Rulings and 47 U.S.C. § 227(c)(5).

68. On May 9, 2013, the FCC released a Declaratory Ruling holding that a corporation or other entity that contracts out its telephone marketing “may be held vicariously liable under federal common law principles of agency for violations of . . . section 227(b) . . . that are committed by third-party telemarketers.”<sup>4</sup>

69. More specifically, the May 2013 FCC Ruling held that, even in the absence of evidence of a formal contractual relationship between the seller and the telemarketer, a seller is liable for telemarketing calls if the telemarketer “has apparent (if not actual) authority” to make the calls. 28 FCC Rcd at 6586 (¶ 34).

70. The FCC has rejected a narrow view of TCPA liability, including the assertion that a seller’s liability requires a finding of formal agency and immediate direction and control over the third-party who placed the telemarketing call. *Id.* at 6587 n. 107.

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<sup>4</sup> *In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules*, CG Docket No. 11-50, Declaratory Ruling, 28 FCC Rcd 6574, 6574 (¶ 1) (May 9, 2013) (“May 2013 FCC Ruling”).

71. The May 2013 FCC Ruling further clarifies the circumstances under which a telemarketer has apparent authority:

[A]pparent authority may be supported by evidence that the seller allows the outside sales entity access to information and systems that normally would be within the seller's exclusive control, including: access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information. The ability by the outside sales entity to enter consumer information into the seller's sales or customer systems, as well as the authority to use the seller's trade name, trademark and service mark may also be relevant. It may also be persuasive that the seller approved, wrote or reviewed the outside entity's telemarketing scripts. Finally, a seller would be responsible under the TCPA for the unauthorized conduct of a third-party telemarketer that is otherwise authorized to market on the seller's behalf if the seller knew (or reasonably should have known) that the telemarketer was violating the TCPA on the seller's behalf and the seller failed to take effective steps within its power to force the telemarketer to cease that conduct.

28 FCC Rcd at 6592 (¶ 46).

72. Nationwide is directly liable for the Variable telemarketing calls because it:

- a. actively participated in those calls;
- b. paid for the calls that its agents commissioned through

Variable; and

- c. issued quotations for insurance wholly derived from Variable's calls.

73. Nationwide requires its insurance agents to represent the company to consumers, including non-customers.

74. Nationwide knowingly and actively accepted business that originated through the illegal telemarketing calls from Variable.

75. Moreover, Nationwide maintains control over its agents' actions, both as to telemarketing and other activities by directing the content of its agents' advertising.

76. At all times relevant, Nationwide had control over whether, and under what circumstances, they issued an insurance quote to a prospective customer.

77. After a prerecorded message, calls by Variable on behalf of Nationwide agents would be transferred to a live Variable representative and then forwarded on to an authorized insurance agent of Nationwide.

78. Either during the phone call, or a few minutes after this telephone call (but arising from the call), Nationwide would issue a quotation for auto insurance to the consumer, as it did with Plaintiffs Rice-Redding and Coleman.

79. Nationwide was aware of the nature of the telemarketing campaign that it engaged in because it offered a program where it would pay for a portion of the cost of Variable's "services" for any agents that used those services.

80. Because Nationwide offered to pay for a portion of the cost of Variable for any agents that used the services, it suggested to its agents that hiring Variable and using its telemarketing services was a good way to obtain new customers.

81. Nationwide also invited Variable to one of its annual conferences, where it suggested that its agents hire Variable.

82. Nationwide issued insurance policies to persons who accepted such quotations.

83. The purpose of Nationwide agents is to serve Nationwide by soliciting applications for insurance from consumers on behalf of Nationwide.

84. Nationwide agents were, and are, authorized to hire third parties, including Variable, to perform marketing, including telemarketing.

85. Indeed, the standard contract entered into between Variable and its insurance agency customers, including Nationwide agents, contains a warranty that *the agencies had Nationwide's permission to hire Variable to make calls on behalf of Nationwide.*

86. As such, Nationwide agents who hired Variable, including the Skipworth Agency, the Allen Agency, and the Nighbert Agency, did so with the actual authority of Nationwide.

87. Each of the telephone numbers that Variable, acting on behalf of Nationwide, called to contact Plaintiffs with an “artificial or prerecorded voice” made by an “automatic telephone dialing system,” was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

88. Nationwide was legally responsible for ensuring that Variable complied with the TCPA, even if Nationwide did not itself make the calls.

89. Nationwide knew (or reasonably should have known) that Variable was violating the TCPA on its behalf, and failed to take effective steps within its power to force the telemarketer to cease that conduct.

90. Finally, the May 2013 FCC Ruling states that called parties may obtain “evidence of these kinds of relationships . . . through discovery, if they are not independently privy to such information.” *Id.* at 6592-593 (¶ 46). Moreover, 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 (¶ 46).

91. Nationwide gave its agents substantial power to affect Nationwide’s legal relations with third parties, including Variable and consumers generally.

92. Nationwide cloaked its agents with apparent authority to enter into advertising arrangements on Nationwide's behalf, including lead generation telemarketing through Variable.

93. Nationwide cloaked its agents in apparent authority specifically as to legal relations between Nationwide's agents and the public, and to hire third parties such as Variable to perform telemarketing, sufficient to support vicarious liability pursuant to the TCPA.

94. Variable transferred customer information, including the Plaintiffs' information, directly to local insurance agents. Thus, Variable has the "ability . . . to enter consumer information into the seller's sales or customer systems," as discussed in the May 2013 FCC Ruling. As such, Variable is an apparent agent of Nationwide.

95. By hiring Variable to make calls on behalf of its agents to generate sales leads, Nationwide "manifest[ed] assent to another person . . . that the agent shall act on the principal's behalf and subject to the principal's control" as described in the Restatement (Third) of Agency. Similarly, by accepting these contacts, Variable "manifest[ed] assent or otherwise consent[ed] . . . to act" on behalf of Nationwide, as described in the Restatement (Third) of Agency. As such, Variable is an agent of Nationwide.

96. These quotes and sales were performed by Nationwide itself.

**Plaintiff Ken and Rita Johansen**

97. Plaintiffs Ken Johansen and Rita Johansen are, and at all times mentioned herein were, “persons” as defined by 47 U.S.C. § 153(39).

98. Nationwide and vendors on its behalf have made many calls to the Johansens’ residential telephone in the four years leading up to the filing of the complaint, none of which were proper. The Johansens’ investigation during discovery has unearthed more calls than they originally thought they received.

99. By way of example, but not limitation, Ken Johansen lists below some of the calls of which he is aware. Ken Johansen’s investigation and discovery into these matters continues.

100. On March 13, 2015, Ken Johansen received a voicemail message on his DNC registered telephone number 614-791-XXXX from “Jim” at Nationwide, telemarketing Defendant’s insurance. The caller ID was 614-274-0112.

101. Ken Johansen received a second call to his DNC registered telephone number 614-791-XXXX from this same 614-274-0112 caller ID a few hours later on March 13, 2015, but the caller did not leave a message. On information and belief, the purpose of this call was, likewise, to telemarket Nationwide insurance.

102. On March 17, 2015, Ken Johansen received another telemarketing call from “Jim” at Nationwide Insurance. The call was placed to Ken Johansen’s DNC registered telephone number 614-791-XXXX. The caller ID was 614-274-0112. Ken Johansen informed Nationwide that he did not want to be called.

103. These March 2015 calls to Ken Johansen were made by McGlothin Insurance and Co. (“McGlothin”), a Nationwide-exclusive insurance agency based in Columbus, Ohio, which obtained Ken Johansen’s information by purchasing it as a “lead” from lead generator LeadAmp.

104. LeadAmp, in turn, claims that it obtained Ken Johansen’s lead information from another third-party lead generator, Precise Leads, which, in turn, claims that it obtained Ken Johansen’s lead information from yet another third-party lead generator, TBMR. TBMR’s owner has since confirmed that it never had any relationship with Nationwide, and that TBMR is not in possession of any evidence indicating that Ken Johansen’s contact information was obtained via the website Nationwide associates with the purported lead.

105. Neither Nationwide, McGlothin, nor any other Nationwide agency or agent had permission or consent to make these calls.

106. The alleged online opt-in process for receiving these calls was defective under the TCPA.

107. On February 19, 2016, the Johansens received a prerecorded telephone message on their home telephone. This call was placed by a company Nationwide hired to make telemarketing calls, called QuoteLab d/b/a MediaAlpha (“MediaAlpha”).

108. Nationwide hired advertising company Universal McCann, which in turn connected Nationwide with MediaAlpha.

109. Nationwide and MediaAlpha then entered into a contractual relationship that allowed MediaAlpha to generate leads for Nationwide, which it did through prerecorded calls.

110. Media Alpha used an autodialer to make this call and played a prerecorded message during the call.

111. Nationwide did not have consent or permission to make this call.

112. Nationwide contends that Plaintiff and the class consented to this call through an online form available at CheapInsurance.com.

113. MediaAlpha developed the web form used on CheapInsurance.com, and uses it on multiple websites to generate marketing leads for Nationwide and other insurance companies.

114. MediaAlpha’s form gathers consumer information on a series of web pages such as those attached as Exhibit A. The disclosures made and processes

used on CheapInsurance.com are legally insufficient to establish that Nationwide obtained a consumer's prior express written consent. For example, but not limitation, MediaAlpha's involvement in the lead generation process is not sufficiently disclosed; consumers are required to consent to autodialed or prerecorded-voice calls in order to receive insurance quotes; and neither Nationwide, Universal McCann, nor CheapInsurance.com complied with the E-Sign Act when obtaining "consent" to call consumers through that website.

115. When MediaAlpha receives leads from websites like CheapInsurance.com, through its legally deficient online "consent" form and quote request process, it loads those telephone numbers into its autodialer, calls those phone numbers, and plays prerecorded messages during such calls, in an effort to sell insurance.

116. When Ken Johansen answered the February 19, 2016 phone call, he responded to the prerecorded message by pressing "1," and was transferred to Dennis Thompson.

117. Dennis Thompson was an employee of Defendant Nationwide, located in the "main building" for Nationwide insurance in Columbus, Ohio, ostensibly Nationwide's corporate headquarters. Mr. Thompson first tried to sell

Mr. Johansen auto insurance, and then he transferred the call to a supervisor named Trenton Johnson.

118. Ken Johansen requested that his telephone number be placed on the Do Not Call List during this call, as well as through a letter sent that same day to Mark Pizzi, President and COO of Nationwide. These requests resulted in oral and written assurances from Nationwide that the Johansens' number was being added to Nationwide's Do Not call List.

119. Despite the Johansens' requests to be placed on Nationwide's Do Not Call List, the Johansens received more telephone solicitations from Nationwide.

120. On April 15, 2016, Nationwide itself called 614-791-XXXX, twice, seeking to speak to Rita Johansen. This was followed by further calls from Nationwide on April 16, 2016, April 18, 2016, and April 19, 2016. These calls were made by Nationwide itself, despite the fact that the Johansens had requested that Nationwide not call them. These calls were for telemarketing purposes to sell Nationwide insurance services, all using caller ID 888-223-0575. Nationwide left at least three voicemail messages on 614-791-XXXX, asking for Rita Johansen to call back.

121. On July 21, 2016, Ken Johansen received another telemarketing call to 614-791-XXXX.

122. The caller said it was “Secured Auto Insurance.” This call began with a strange interaction with a series of partially-interactive prerecorded voice messages that did not always interact correctly. Through these prerecorded voice messages, Secured Auto Insurance performed an initial screening on Plaintiff.

123. Secured Auto Insurance then transferred this call to Nationwide, which played another prerecorded voice message on the call. Among other things, Nationwide’s prerecorded message asked for Plaintiff to enter his zip code on his telephone keypad.

124. After a few moments, Ken Johansen was transferred to a Nationwide employee who began with, “It’s a great day at Nationwide,” identified himself as “Joshua Jackowski,” and said that he is a licensed agent. The agent then disconnected from the call.

125. This call was placed as part of an advertising campaign that Nationwide set up through advertising company Universal McCann and QuinStreet.

126. QuinStreet, in turn, has indicated that the July 21, 2016 call to Ken Johansen came through several further layers of third-party lead generators—i.e., QuinStreet received the lead by way of Avenge Digital, which received the lead through Astoria, which received the lead through Direct Web Advertising, which

received the lead through Philippines-based Abundantgeeks—and was ultimately derived through a purported “opt-in” obtained through BestCheapIns.com.

127. Though Ken Johansen disagrees that he ever submitted his information on BestCheapIns.com or any other lead generation website through which Nationwide claims he consented to be called, the disclosures made and processes used on BestCheapIns.com are legally insufficient to establish that Nationwide obtained a consumer’s prior express written consent. For example, but not limitation, consumers are required to consent to autodialed or prerecorded-voice calls in order to receive insurance quotes; on information and belief, neither Nationwide, Universal McCann, nor BestCheapIns.com complied with the E-Sign Act when obtaining “consent” to call consumers through that website; and Abundantgeeks and Nationwide are not identified “marketing partners” from whom the website states the visitor purportedly agrees to be called.

128. This lawsuit was filed on September 27, 2016.

129. Despite Ken Johansen’s filing of this lawsuit, his continued presence on the National Do Not Call Registry, and his prior requests to be placed on the Nationwide Do Not Call List, the calls continue.

130. On December 8, 2016 Rita Johansen received another telemarketing call to 614-791-XXXX. She received a pre-recorded message asking if she wanted

an insurance quote powered by QuoteLabs. Rita did not respond and disconnected. This call had the same Caller ID used on the February 19, 2016 call when the Johansens were transferred to a Nationwide agent Dennis Thomson.

131. On December 9, 2016, Ken Johansen received another telemarketing call to 614-791-XXXX. He received a pre-recorded message asking if he wanted an insurance quote powered by QuoteLabs. Ken did not respond and disconnected. This call had the same Caller ID used on the February 19, 2016 call when the Johansens were transferred to a Nationwide agent Dennis Thomson. .

132. The December 8 and December 9 calls were with prerecorded messages were placed by MediaAlpha as part of its Nationwide campaign, allegedly arising from a lead obtained from another third-party lead generator, iEntourage.

133. Neither Nationwide, MediaAlpha, nor iEntourage has produced any purported consent information specific to this call.

134. Ken Johansen received another call on June 16, 2017 from “Jon” who was calling from “US Auto Care” as part of its relationship with Nationwide Insurance. The caller ID was 512-555-0174. During that call, Ken Johansen was asked for his zip code and if he had home or auto insurance.

135. After these questions, and after the Nationwide jingle played while he was on hold, Ken Johansen was transferred to “Chris,” an individual who identified himself as an employee of Nationwide Insurance – not an independent agent – who is located at Nationwide’s call center in Des Moines, Iowa.

136. This call was generated through MediaAlpha, apparently as a result of a lead generated by MediaAlpha – again facilitated by Universal McCann – through another subvendor called Traffic Tilt. Media Alpha claims not to know the origin of this call, other than that it came from Traffic Tilt. Discovery in this case suggests that the call may have originated in Pakistan, with a company called Amigos BPO.

137. On November 16, 2017, Ken Johansen received a call from caller ID 740-914-1189, in which the caller announced that he was with Nationwide. Before Plaintiff could obtain more details, the caller hung up. Upon information and belief, this call was placed by Nationwide itself.

138. On information and belief, Nationwide made or caused other calls telemarketing calls to be made to Mr. Johansen. Some of those calls included a prerecorded voice.

139. The Johansens were harmed by these calls because they were unwelcome intrusions on their privacy and because they occupied their telephone line, preventing them from engaging in legitimate communications.

140. In this litigation, Nationwide has claimed that it knows the origin of these calls, but it has refused to disclose such to Plaintiffs.

141. Plaintiff's investigation shows that the purported "opt-in" leads upon which these calls are claimed to derive are fraudulent. In fact, in addition to containing wrong birthdate, contact, and other information, not a single one of the IP addresses associated with these leads match Ken Johansen's IP address, and some have been affirmatively proven to belong to *other* consumers identified through internet service provider ("ISP") subpoena responses.

**Plaintiff Haile-Recio**

142. Plaintiff Haile-Recio is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

143. Ms. Haile-Recio has received multiple telemarketing calls from or on behalf of Defendant to her cellular telephone number, 206-859-XXXX. Some of these calls appear to have been placed in September 2015, although Ms. Haile-Recio recalls them happening in October, 2015, too. Moreover, there may have

been other calls from Nationwide to Ms. Haile-Recio, both before and after fall 2015.

144. The calls Ms. Haile-Recio received identified the caller as “Nationwide” and solicited the purchase of Nationwide insurance.

145. Ms. Haile-Recio is not and at all relevant times was not a Nationwide customer, and she has no prior or other relationship with Nationwide.

146. During some calls, Ms. Haile-Recio requested that calling cease, including by asking to speak to a supervisor to end the calls; however, Nationwide continued to make these telemarketing calls to her phone.

147. On information and belief—including given the automated nature of the calls and fact that the calling continued despite multiple requests that it stop—the Nationwide calls Ms. Haile-Recio received were made using an automatic telephone dialing system with the capacity to store or produce telephone numbers and dial those numbers at random, in sequential order, or from a database or list of numbers.

148. The generic and scripted telemarketing pitch that Ms. Haile-Recio received on the call further indicated to her that the call was made using an autodialer. This suggests that the calls were made *en masse*, using automated equipment.

149. Ms. Haile-Recio was harmed by these calls because they were unwelcome intrusions on her privacy, annoying, and wasted her time, and because they occupied her telephone line, preventing her from engaging in legitimate communications.

**NATIONWIDE’S LIABILITY FOR ITS OWN CALLS**

150. Nationwide is, and at all times mentioned herein was, a “person,” as defined by 47 U.S.C. § 153(39).

151. For some of the calls to the Johansens and Haile-Recio, Nationwide used an autodialer and/or prerecorded messages from its own office, or hired a company that engages in the use of an autodialer and/or prerecorded messages.

152. Nationwide itself also used a prerecorded voice to further its telemarketing purpose during calls that were initiated by third parties.

153. These calls were not made or commissioned by Nationwide Agents, and instead were commissioned and/or made by Nationwide’s corporate office itself.

154. As a result, Nationwide is directly liable for the calls to the Johansens, Haile-Recio, and those similarly situated class members because it actively participated in every aspect of the autodialed and/or prerecorded telemarketing calls.

### **CLASS ACTION ALLEGATIONS**

155. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully stated herein.

156. Plaintiffs bring this action individually and on behalf of all other persons similarly situated (hereinafter referred to as “the Class”) pursuant to Federal Rule of Civil Procedure 23.

157. Plaintiffs propose the following Class definitions, subject to amendment as appropriate:

#### **Class I: Autodialer Class:**

All persons within the United States who received a telephone call from Nationwide, or any entity acting on behalf of Nationwide that was transferred to Nationwide, on their cell phone, the purpose of which was to advertise Nationwide’s goods or services, which was made using an automatic telephone dialing system at any time after four years prior to the filing of the Complaint through the date of certification.

Variable Subclass: Plaintiffs allege a subclass of persons whose calls were made by Variable.

Nationwide Subclass: Plaintiffs allege a subclass of persons whose calls were made by Nationwide itself.

Plaintiffs Rice-Redding, Coleman and Haile-Recio are the proposed class representatives of the above class. Plaintiffs Rice-Redding and Coleman are class representatives of the Variable Subclass, and Plaintiff Haile-Recio is the class representative for the Nationwide Subclass.

Class II: Prerecorded Message Class:

All persons within the United States who received a telephone call from Nationwide, or any entity acting on behalf of Nationwide, advertising Nationwide's goods or services, where Nationwide or a third party played any artificial or prerecorded voice at any time during such call, where the call was made four years prior to the filing of the Complaint through the date of certification.

Variable Subclass: Plaintiffs allege a subclass of persons whose calls were made by Variable.

Nationwide Subclass: Plaintiffs allege a subclass of persons whose calls were made by Nationwide itself.

Plaintiffs Rice-Redding, Coleman, and the Johansens are the proposed class representatives of the above class. Rice-Redding and Coleman are class representatives of the Variable Subclass, and the Johansens are the class representative for the Nationwide Subclass.

Class III: National Do Not Call Registry Class

All persons within the United States whose phone numbers had been registered on the National Do Not Call Registry for 31 days or longer, and who received more than one telephone solicitation within any 12-month period from or on behalf of Nationwide, at any time four years prior to the filing of the Complaint through the date of certification.

The Johansens are the proposed class representatives for the Do Not Call Registry Class.

Class IV: Internal Do Not Call Class

All persons within the United States who had requested not to receive calls from Nationwide or its vendors (including sub-vendors), and who thereafter received more than one telemarketing call within any 12-month period from or on behalf of Nationwide, where at least one such phone call happened at any time four years prior to the filing of the Complaint through the date of certification.

The Johansens and Haile-Recio are the proposed class representatives for the Internal Do Not Call Class.

158. Excluded from the Classes are Defendant, and any entities in which Defendant has a controlling interest, Defendant's agents and employees, any Judge to whom this action is assigned, and any member of such Judge's staff and immediate family, and claims for personal injury, wrongful death and/or emotional distress.

159. According to the Variable database, there are more than 20,000 members in the Autodialer and Prerecorded Message Classes.

160. Plaintiffs do not know the exact number of members in the National Do Not Call Registry and Internal Do Not Call Classes, but Plaintiffs reasonably believe Class members number, at minimum, in the thousands.

161. Plaintiffs and all members of the Classes have been harmed by the acts of the Defendant, including, but not limited to, the invasion of their privacy, annoyance, waste of time, the deletion of their cell phone battery, and the intrusion

on their cellular telephone that occupied it from receiving legitimate communications.

162. This Class Action Complaint seeks injunctive relief and money damages.

163. The joinder of all Class members is impracticable due to the size and relatively modest value of each individual claim.

164. Additionally, the disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

165. Further, members of the Variable Subclasses are identified by name, address, and telephone number in the Variable database, and remaining class members can be identified through records maintained by Nationwide and/or its vendors and subvendors.

166. There are well defined, nearly identical, questions of law and fact affecting all parties.

167. The questions of law and fact, referred to above, involving the class claims predominate over questions which may affect individual Class members.

168. Such common questions of law and fact include, but are not limited to, the following:

a. Whether Nationwide used an automatic telephone dialing system or an artificial or prerecorded voice in its non-emergency calls to Class members' telephones to promote its goods or services.

b. Whether Nationwide or those acting on its behalf used an automatic telephone dialing system in making non-emergency calls to Class members' cell phones;

c. Whether Nationwide or those acting on its behalf used an artificial or prerecorded voice in its non-emergency calls to Class members' phones;

d. Whether the Defendant can meet its burden of showing it obtained prior express consent (*i.e.*, written consent that is clearly and unmistakably stated), to make such calls;

e. Whether the calls made by or on behalf of Nationwide were made to telephone numbers on the National Do Not Call Registry or Nationwide's Internal Do Not Call List;

f. Whether the Defendant's conduct was knowing and/or willful;

g. Whether the Defendant is liable for statutory damages; and

h. Whether the Defendant should be enjoined from engaging in such conduct in the future.

169. As persons who received non-emergency telephone calls using an automatic telephone dialing system or an artificial or prerecorded voice or calls while they were on the National or Nationwide do not call lists, without their prior express consent within the meaning of the TCPA, Plaintiffs assert claims that are typical of each Class member who also received such phone calls.

170. Further, Plaintiffs will fairly and adequately represent and protect the interests of the Classes.

171. Plaintiffs have no interests which are antagonistic to any member of the Classes.

172. Plaintiffs have retained counsel experienced in handling class action claims involving violations of federal consumer protection statutes, including claims under the TCPA.

173. A class action is the superior method for the fair and efficient adjudication of this controversy.

**CAUSES OF ACTION**

**FIRST COUNT**

**AUTODIALER TO CELL VIOLATIONS (INCLUDING BUT NOT LIMITED TO KNOWING AND/OR WILLFUL VIOLATIONS) OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

174. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

175. This Count is brought by Plaintiffs Rice-Redding, Coleman and Haile-Recio.

176. The foregoing acts and omissions of the Defendant constitute numerous and multiple violations of the TCPA concerning calls made through use of any “automatic telephone dialing system.” 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii).

177. As a result of the Defendant’s violations Plaintiffs and Class members are entitled to an award of \$500 in statutory damages for each and every violation of the statute, or up to \$1,500 in statutory damages for each willfully or knowingly-made violation, pursuant to 47 U.S.C. § 227(b)(3).

178. Plaintiffs and Class members are also entitled to and do seek injunctive relief prohibiting the Defendant’s violation of the TCPA in the future.

**SECOND COUNT**

**PRERECORDED OR ARTIFICIAL VOICE VIOLATIONS (INCLUDING BUT NOT LIMITED TO KNOWING AND/OR WILLFUL VIOLATIONS) OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

179. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

180. This Count is brought by Plaintiffs Rice-Redding, Coleman, Haile-Recio and the Johansens.

181. The foregoing acts and omissions of the Defendant constitute numerous and multiple violations of the TCPA, concerning calls made through use of a “artificial or prerecorded voice,” including but not limited to 47 U.S.C. §§ 227(b)(1)(A)(iii) & (b)(1)(B); 47 C.F.R. §§ 64.1200(a)(1)(iii) & 64.1200(a)(2).

182. Nationwide and its vendors also violated 47 C.F.R. §§ 64.1200(b) as to many or all of the prerecorded messages that were used on calls, because the calls did not clearly and accurately identify the business that was making the call at the beginning of such calls, did not clearly state the telephone number of such business and/or did not provide an adequate automated interactive voice for the person to make a do not call request.

183. As a result of the Defendant’s violations, Plaintiffs and Class members are entitled to an award of \$500 in statutory damages for each and every

violation of the statute, or up to \$1,500 in statutory damages for each willfully or knowingly-made violation, pursuant to 47 U.S.C. § 227(b)(3).

184. Plaintiffs and Class members are also entitled to and do seek injunctive relief prohibiting the Defendant's violation of the TCPA in the future.

### **THIRD COUNT**

#### **NATIONAL DO NOT CALL REGISTRY VIOLATIONS (INCLUDING BUT NOT LIMITED TO KNOWING AND/OR WILLFUL VIOLATIONS) OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

185. Plaintiff Ken Johansen incorporates by reference all other paragraphs of this Complaint as if fully stated herein.

186. The foregoing acts and omissions by Defendant constitute violations of 47 U.S.C. § 227(c), which prohibits initiating telephone solicitations to a person's residential or cellular telephone more than once during a twelve-month period, where such number is listed on the National Do Not Call Registry, and has strict requirements as to compliance policies, practices and procedures. *See* 47 C.F.R. § 64.1200(c)(2).

187. As a result of the Defendant's violations, Plaintiffs Johansen and the members of the National Do Not Call Registry Class are entitled to damages for each and every violation of the statute. *See* 47 U.S.C. § 227(c)(5).

188. Plaintiffs Johansen and the Members of the National Do Not Call Registry Class are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by the Defendant in the future. *Id.*

#### **FOURTH COUNT**

##### **INTERNAL DO NOT CALL VIOLATIONS (INCLUDING BUT NOT LIMITED TO KNOWING AND/OR WILLFUL VIOLATIONS) OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

189. Plaintiffs Haile-Recio and the Johansens incorporate by reference all other paragraphs of this Complaint as if fully stated herein.

190. The foregoing acts and omissions by Defendant constitute violations of 47 U.S.C. § 227(c), which requires maintaining an accurate list of telephone numbers and persons who have requested not to receive telemarketing calls, and has strict requirements as to compliance policies, practices and procedures. *See* 47 C.F.R. § 64.1200(d).

191. Moreover, many or all of the calls were noncompliant with the requirements of 47 C.F.R. § 64.1200(d)(4), which requires the name of the individual caller and the entity on whose behalf calls are being made, be identified during the call, and also requires disclosure of a telephone number or address at which the person may be contacted.

192. As a result of the Defendant's violations, Plaintiffs Johansen and Haile-Recio, and the members of the Internal Do Not Call Class, are entitled to damages for each and every violation of the statute. *See* 47 U.S.C. § 227(c)(5).

193. Plaintiffs Johansen and Haile-Recio, and the members of the Internal Do Not Call Class, are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by the Defendant in the future. *See Id.*

### **FIFTH COUNT**

#### **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227**

194. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if fully stated herein.

195. This Count is brought by all Plaintiffs.

196. The foregoing acts and omissions of the Defendant, including each Count and violation encompassed by this complaint, constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

197. As a result of the Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiffs and each member of the Class is entitled to treble damages of up to \$1,500 for each and every violation of the statute, pursuant to 47 U.S.C. §§ 227(b)(3) and 227(c)(5).

198. Plaintiffs and all Class members are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by the Defendant in the future.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs and all Class members the following relief against the Defendant:

A. Injunctive relief prohibiting such violations of the TCPA by the Defendant in the future, for example (but not limited to):

(1) Requiring Nationwide to have in its possession, at the time it or any vendor (or subvendor) accepts calls or marketing leads, data that demonstrates prior express written consent. This would include for example a verified copy of the web page on which such consent allegedly occurred and data that shows compliance with the E-Sign Act;

(2) Requiring Nationwide to hire an independent, third-party company (agreed to by Plaintiffs and approved by the Court) to investigate and audit how each telephone call by Nationwide or any vendor was made, to determine whether it was made using an automatic telephone dialing system or prerecorded voice, and to make verified quarterly reports to the Court for a period of no shorter than five years.

B. As a result of Defendant's statutory violations of 47 U.S.C. § 227(b), Plaintiffs seek for themselves and each Class member \$500 in statutory damages for each and every violation of the TCPA;

C. As a result of Defendant's statutory violations of 47 U.S.C. § 227(c), Plaintiffs seek for themselves and each Class member \$500 in statutory damages for each and every violation of the TCPA;

D. As a result of the Defendant's willful and/or knowing violations of the TCPA, Plaintiffs seek for themselves and each Class member treble damages, as provided by statute, of up to \$1,500 for each and every violation of the TCPA;

E. An award of attorneys' fees and costs to counsel for Plaintiffs and the Class as permitted by law;

F. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Classes the Court deems appropriate, finding that Plaintiffs are a proper representative of the Class, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Class;

G. Such other relief as the Court deems just and proper.

Dated: March 8, 2019

By: /s/ Michael J. Boyle, Jr.  
Michael J. Boyle, Jr.

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*Attorneys for Plaintiffs and the Proposed Classes*

**CERTIFICATION OF COUNSEL**

I hereby certify in accordance with U.S.D.C. N.D. Ga. Local Rule 7.1D that the foregoing SECOND AMENDED CLASS ACTION COMPLAINT has been prepared using Times New Roman, 14 point font, as required in U.S.D.C. N.D. Ga. Local Rule 5.1C.

Dated: March 8, 2019

s/ Michael J. Boyle, Jr.

**CERTIFICATE OF SERVICE**

The undersigned counsel certifies that a copy of the foregoing was filed through this Court's CM/ECF system, and that all attorneys of record will be sent a copy of the same electronically through that system.

Dated: March 8, 2019

s/ Michael J. Boyle, Jr.