

Exhibit A

**IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF PENNSYLVANIA**

STEWART ABRAMSON, individually and on
behalf of a class of all persons and entities
similarly situated,

Plaintiff

vs.

NORTH STAR INSURANCE ADVISORS
LLC, TORCHLIGHT TECHNOLOGY GROUP
LLC and RAPID RESPONSE MARKETING
LLC

Defendants.

Case No. 2:22-cv-827

**FIRST AMENDED COMPLAINT
CLASS ACTION**

CLASS ACTION COMPLAINT

Preliminary Statement

1. As the Supreme Court explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

2. Plaintiff Stewart Abramson (“Plaintiff”) brings this action under the TCPA alleging that Rapid Response Marketing LLC (“Rapid Response”) was hired by Torchlight Technology Group LLC (“Torchlight”) to send pre-recorded messages promoting the services of

North Star Insurance Advisors LLC (“North Star Insurance”), for the purposes of promoting their goods and services. Such calls were made without the call recipient’s prior express written consent.

3. Because the calls were transmitted using technology capable of generating thousands of similar calls per day, Plaintiff brings this action on behalf of a proposed nationwide class of other persons who were sent the same illegal telemarketing call.

4. A class action is the best means of obtaining redress for the Defendant’s illegal telemarketing and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

Parties

5. Plaintiff Stewart Abramson is a Pennsylvania resident in this District.

6. Defendant North Star Insurance Advisors LLC is a Missouri registered company headquartered in Wentzville, Missouri.

7. Defendant Torchlight Technology Group LLC is a Delaware limited liability company with its principal place of business in Pennsylvania.

8. Defendant Rapid Response Marketing LLC is a Nevada limited liability company.

Jurisdiction & Venue

9. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiff’s claims arise under federal law.

10. North Star Insurance Advisors LLC is subject to personal jurisdiction as it (a) authorized calls into this District and (b) does business in this District.

11. Torchlight Technology Group LLC is subject to personal jurisdiction as it (a) authorized calls into this District and (b) has its principal place of business in Pennsylvania.

12. Rapid Response Marketing LLC is subject to personal jurisdiction as it made the pre-recorded call into this District.

13. Venue is proper under 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District, as the automated calls to the Plaintiff were sent into this District.

The Telephone Consumer Protection Act

14. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy [.]” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

The TCPA Prohibits Automated Telemarketing Calls

15. The TCPA makes it unlawful to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an artificial or prerecorded voice to any residential telephone number. *See* 47 U.S.C. § 227(b)(1)(B).

16. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A) or 47 U.S.C. § 227(b)(1)(B). *See* 47 U.S.C. § 227(b)(3).

17. According to findings by the Federal Communication Commission (“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.

18. In 2013, the FCC required prior express written consent for all autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers and residential lines.

Specifically, it ordered that:

[A] consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received “clear and conspicuous disclosure” of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.[] In addition, the written agreement must be obtained “without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.[]”

19. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

Factual Allegations

20. North Star Insurance provides insurance services to consumers.

21. North Star Insurance uses telemarketing to promote its products and solicit new clients.

22. A former employee of the Defendant posted a review of their experience while working for the Defendant, stating that their job entailed “Constantly harassing people about ‘senior benefits.’”¹

Worst job I ever had

Pre-qualifier (Former Employee) - Wentzville, MO - February 24, 2019

Quite terrible actually. A good call center though, not the best one but no shabby. Music was loud, like calling people in a nightclub. Constantly harassing people about “senior benefits.”

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¹ <https://www.indeed.com/cmp/North-Star-Insurance-Advisors,-LLC/reviews?fcountry=ALL&start=20>

² <https://www.indeed.com/cmp/North-Star-Insurance-Advisors,-LLC/reviews?fcountry=ALL&start=20>

23. Other former employees of the Defendant have also made complaints online about the cold calls that they were required to make on behalf of the Defendant, for instance:

Cold calls!

Insurance Sales Agent (Former Employee) - Wentzville, MO - March 23, 2020

This company sounds great, and so does the pay, but just so you know, you will be making all cold calls and have an unreasonable sales goal. You are forced to push and push the customer. I had to keep someone on the phone that said she was driving her grandkids and couldn't safely talk right now.

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I Wouldn't Do It If I Were You

Feb 9, 2021 - Insurance Agent in Wentzville, MO

Recommend CEO Approval Business Outlook

Pros

Great training program, no glass ceiling (you work hard, it pays off).

Cons

You have to filter through a lot of calls to get sales, many people you speak with half the time aren't interested or don't qualify. \$500 due monthly to work for them. No other benefits.

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24. Multiple consumers have posted complaints online about receiving unwanted pre-recorded telemarketing calls promoting the Defendant North Star, including:

- “Called in the early evening. Caller ID listed "Carolina Bch, NC." Left part of a robo message asking the listener to listen to a 3-minute pre-recorded message. . . . Another website has identified the number with a senior scam!”⁵
- “Claims to be ‘Senior Benefits,’ a known scam preying on ‘Seniors.’ Give them NO personal information. They are just thieves.”⁶
- “They have called everyday now for a month now. I know it is some kind of scam and I don’t know how to stop them from calling”⁷
- “‘SENIOR BENEFITS’ SCAM. Sick of these CRIMINALS PREYING ON THE ELDERLY and INNOCENT!”⁸

³ <https://www.indeed.com/cmp/North-Star-Insurance-Advisors,-LLC/reviews?fcountry=ALL>

⁴ https://www.glassdoor.com/Reviews/North-Star-Insurance-Advisors-Reviews-E1053969_P3.htm

⁵ <https://800notes.com/Phone.aspx/1-910-216-2530>

⁶ *Id.*

⁷ *Id.*

⁸ <https://findwhocallsyou.com/9102162530>

- “I press option #2 to remove me, but they still continue to call me.”⁹
- “Called me a few times.”¹⁰
- “I press 2 but Senior Benefits just keeps on calling. These guys need to be stopped!”¹¹

25. North Star Insurance makes their own telemarketing calls and hires third parties to facilitate those telemarketing calls, which is what Torchlight did for North Star Insurance.

26. These telemarketing efforts include the use of automated calls to send prerecorded messages.

27. North Star Insurance authorized these calls despite the fact that they have previously been sued for this same conduct. *See Woods v. North Star Insurance Advisors, LLC*, Civil Action No. 21-cv-687 (E.D. Mo.).

28. The Plaintiff received a pre-recorded call on May 24, 2022 from Rapid Response who Torchlight hired to send telemarketing calls on behalf of North Star Insurance and consistent with North Star Insurance’s instruction to Torchlight.

29. The Plaintiff received at least one such call on his residential telephone line, 412-XXX-0871.

30. That number is not associated with a business and is used for personal purposes.

31. The pre-recorded message said, “Hi. This is Mary from American Senior Citizen Care.”

32. The message that the call delivered was clearly pre-recorded because (a) there was a delay after the Plaintiff answered the line (b) a “click” to play the pre-recorded message was heard by the Plaintiff prior to the pre-recorded message (c) the pre-recorded message was

⁹ *Id.*

¹⁰ <https://800notes.com/Phone.aspx/1-660-460-4033>

¹¹ <https://findwhocallsyou.com/6604604033?CallerInfo#Done>

monotone, non-personalized and generic (d) the Plaintiff received other telemarketing calls that delivered the identical pre-recorded message.

33. After the pre-recorded message, the Plaintiff spoke with a live individual named “Mary”.

34. “Mary” told the Plaintiff that she was with “Senior Benefits”, a name that Rapid Response uses for telemarketing purposes.

35. Mary asked the Plaintiff a series of medical history questions to determine his eligibility for the insurance that the Defendant promotes.

36. Then “Mary”, transferred the Plaintiff to Chad Racine, an employee of North Star Insurance.

37. “Mary” introduced the Plaintiff to Chad, and “Mary” gave Chad her pre-qualifier identification number as 371.

38. Like “Mary”, Chad told the Plaintiff that the name of his company was “Senior Benefits”.

39. Chad informed the Plaintiff that he was licensed to sell insurance in Pennsylvania under the license number 819061.

40. Chad asked the Plaintiff a series of medical history questions to determine his eligibility for the insurance that the Defendant promotes.

41. After asking the Plaintiff questions, Chad informed the Plaintiff that he found a plan for the Plaintiff that he called the North Star Legacy Whole Life Insurance Policy through Occidental Life Insurance Company.

42. Occidental Life Insurance is an insurance company whose services North Star Insurance promotes.

43. The plaintiff received other similar pre-recorded calls in May of 2022.

44. Plaintiff and the other call recipients were harmed by these calls. They were temporarily deprived of legitimate use of their phones because the phone line was tied up, they were charged for the calls and their privacy was improperly invaded.

45. Moreover, these calls injured Plaintiff because they were frustrating, obnoxious, annoying, were a nuisance and disturbed the solitude of Plaintiff and the class.

North Star Insurance and Torchlight’s Liability for Rapid Response’s Conduct

46. For more than twenty years, 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.” *In re Rules & Regulations Implementing the TCPA*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd. 12391, 12397, ¶ 13 (1995).

47. In fact, the Federal Communication Commission has instructed that sellers such as North Star Insurance may not avoid liability by outsourcing telemarketing to third parties:

[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.”

In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules, 28 FCC Rcd. 6574, 6588 ¶ 37 (2013) (“May 2013 FCC Ruling”) (internal citations omitted).

48. The May 2013 FCC Ruling held that, even absent 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. *Id.* at 6586, ¶ 34.

49. 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.

Id. at 6592, ¶ 46.

50. North Star Insurance and Torchlight are liable for the telemarketing calls that were initiated by Rapid Response before being transferred to North Star Insurance.

51. North Star Insurance and Torchlight hired Rapid Response to originate new business using telemarketing calls.

52. North Star Insurance and Torchlight could have restricted Rapid Response from calling consumers using a pre-recorded message, but it did not.

53. North Star Insurance and Torchlight accepted the benefits of Rapid Response's illegal telemarketing by accepting live transfers of leads directly from Rapid Response, despite the fact that those leads were generated through illegal telemarketing.

54. North Star Insurance and Torchlight had absolute control over whether, and under what circumstances, it would accept a customer.

55. North Star Insurance and Torchlight determined the parameters and qualifications for customers to be transferred and required Rapid Response to adhere to those requirements.

56. North Star Insurance and Torchlight knew (or reasonably should have known) that Rapid Response was violating the TCPA on its behalf and failed to take effective steps within its power to force the telemarketer to cease that conduct. Any reasonable company that accepts telemarketing call leads from lead generators would, and indeed must, investigate to ensure that those calls were made in compliance with TCPA rules and regulations.

57. North Star Insurance and Torchlight gave interim instructions to Rapid Response, including instructions as to the geographic areas to target, the hours Rapid Response could call, and the volume of calling.

58. By having Rapid Response initiate the calls on its behalf to generate new business, Torchlight "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.

59. Rapid Response logged into and transferred customer information directly to North Star Insurance's call tracking system. Thus, the company that Torchlight hired

has the “ability ... to enter customer information into the seller’s sales or customer systems,” as discussed in the May 2013 FCC Ruling.

60. North Star Insurance and Torchlight reviewed and approved the Rapid Response scripts for determining whether a customer was eligible to be transferred, as discussed in the May 2013 FCC Ruling.

61. 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. 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.

Class Action Statement Pursuant to LCvR 23

62. Plaintiff brings this action on behalf of himself and the following Class (the “Class”) pursuant to Federal Rule of Civil Procedure 23.

63. Plaintiff proposes the following Class definition, subject to amendment as appropriate:

Robocall Class: All persons within the United States: (1) to whose residential telephone line (2) any of the Defendants, or a call center they hired (3) made a telemarketing call (4) from four years prior to the filing of the case through the date of class certification (5) using an identical or substantially similar pre-recorded message used to place telephone calls to Plaintiff.

64. Plaintiff is a member of this class and will fairly and adequately represent and protect the interests of this class as he has no interests that conflict with any of the class members.

65. Excluded from the Class are counsel, the Defendants, and any entities in which the Defendant has a controlling interest, the Defendants' agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

66. Plaintiff and all members of the Class have been harmed by the acts of the Defendants, including, but not limited to, the invasion of their privacy, annoyance, waste of time, the use of their telephone power and network bandwidth, and the intrusion on their telephone that occupied it from receiving legitimate communications.

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

68. The Class as defined above are identifiable through the Defendants' dialer records, other phone records, and phone number databases.

69. Plaintiff does not know the exact number of members in the Class, but Plaintiff reasonably believes Class members number, at minimum, in the hundreds in each class.

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

71. 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.

72. There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact, referred to above, involving the class claims predominate over questions which may affect individual Class members.

73. There are numerous questions of law and fact common to Plaintiff and to the proposed Class, including but not limited to the following:

- (a) Whether the Defendants used pre-recorded message to send telemarketing calls;

- (b) Whether the Defendants are vicariously liable for any of the pre-recorded call conduct;
- (c) whether Defendants made calls to Plaintiff and members of the Class without first obtaining prior express written consent to make the calls;
- (d) whether Defendants' conduct constitutes a violation of the TCPA; and
- (e) whether members of the Class are entitled to treble damages based on the willfulness of Defendants' conduct.

74. Further, Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has no interests which are antagonistic to any member of the Class.

75. Plaintiff has retained counsel with substantial experience in prosecuting complex litigation and class actions, and especially TCPA class actions. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class, and have the financial resources to do so.

76. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendants and/or their agents.

77. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case.

78. Plaintiff is not aware of any litigation concerning this controversy already commenced by others who meet the criteria for class membership described above.

FIRST CAUSE OF ACTION

Violation of the Telephone Consumer Protection Act 47 U.S.C. 227(b) on behalf of the Robocall Class

79. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

80. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to the residential telephone numbers of Plaintiff and members of the Class delivering pre-recorded messages.

81. As a result of Defendants' and/or its affiliates, agents, and/or other persons or entities acting on Defendants' behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiff and members of the Class presumptively are entitled to an award of \$500 in damages for each and every call made to their residential telephone numbers using an artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

82. If the Defendants' conduct is found to be knowing or willful, the Plaintiff and members of the Class are entitled to an award of up to treble damages.

83. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or its affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to any residential telephone numbers using an artificial or prerecorded voice in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

A. Injunctive relief prohibiting Defendants from calling residential telephone numbers advertising their goods or services, except for emergency purposes, using a pre-record message in the future;

B. That the Court enter a judgment awarding Plaintiff and all class members statutory damages of \$500 for each violation of the TCPA and \$1,500 for each knowing or willful violation; and

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

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

JURY DEMAND

Plaintiff requests a jury trial as to all claims of the complaint so triable.

Plaintiff,
By Counsel,

By: /s/ Anthony Paronich
Anthony I. Paronich
Paronich Law, P.C.
350 Lincoln Street, Suite 2400
Hingham, MA 02043
(617) 485-0018
anthony@paronichlaw.com
Pro Hac Vice

Jeremy C. Jackson (PA Bar No. 321557)
BOWER LAW ASSOCIATES, PLLC
403 S. Allen St., Suite 210
State College, PA 16801
Tel.: 814-234-2626
jjackson@bower-law.com