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| FEB 22 2024                                     |                                 |
| CLERK U S DISTRICT COURT<br>DISTRICT OF ARIZONA |                                 |
| BY _____  | DEPUTY                          |

1 Jason Crews  
 2 1515 N Gilbert Rd Ste 107-204  
 3 Gilbert, AZ 85234  
 4 602-295-1875  
 5 Jason.crews@gmail.com

7 UNITED STATES DISTRICT COURT  
 8 FOR THE DISTRICT ARIZONA  
 9 PHOENIX DIVISION

11 Case No.: **CV24-00365-PHX-SMM**

14 Complaint for Violations of:

- 15 1. NEGLIGENT VIOLATIONS OF
- 16 THE TELEPHONE CONSUMER
- 17 PROTECTION ACT [47 U.S.C. §227 ET
- 18 SEQ.]
- 19 2. WILLFUL VIOLATIONS OF
- 20 THE TELEPHONE CONSUMER
- 21 PROTECTION ACT [47 U.S.C. §227 ET
- 22 SEQ.]

15 Jason Crews,  
 16  
 17 Plaintiff,  
 18 vs.  
 19 Insurance Supermarket, Inc,  
 20 Defendant.

25 DEMAND FOR JURY TRIAL

27 ///

1 **COMPLAINT**

2 **Preliminary Statement**

3 1. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone  
4 Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in response  
5 to widespread public outrage about the proliferation of intrusive, nuisance calling practices.  
6 See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

7 2. The Defendants in this action Insurance Supermarket, Inc. orchestrated placing  
8 at least one illegal telemarketing calls using an Automated Telephone Dialing System  
9 (“ATDS”) including an artificial or prerecorded voice to a number assigned to a cellular  
10 service which was included on the national Do-Not-Call List.

11 3. Plaintiff never consented to receive such messages.

12 **Parties**

13 4. Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County, Arizona  
14 at all relevant times, and a resident of this District.

15 5. Defendant Insurance Supermarket, Inc. (“Supermarket”), incorporated and based in  
16 Florida, doing business as Sr. Benefits, and is in the business of selling “life insurance  
17 solutions to consumers”<sup>1</sup>.

18 **Jurisdiction & Venue**

19 6. The Court has federal question subject matter jurisdiction over these TCPA claims:  
20 *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

21 7. The Court has specific personal jurisdiction over the Defendants because they have  
22 repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants purposely  
23 placed calls to Arizona residents.

24 8. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part  
25 of the events or omissions giving rise to the claim occurred in this District, as the calls to  
26 Plaintiff were placed into this District.

27 \_\_\_\_\_  
28 <sup>1</sup> <https://archive.ph/BLa23>

**The Telephone Consumer Protection Act**

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the automated calling 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).

**Factual Allegations**

9. To promote their services Defendants relied on prerecorded “robocalls.”

10. To promote their services Defendants also relied on the use of ATDS systems.

11. Plaintiff had no prior business relationship with Defendants.

12. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

13. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

14. The Cell Number has been on the Do-Not-Call registry since November 7, 2006.

15. The Cell Number is assigned to a cellular phone used exclusively for personal residential purposes.

16. Plaintiff did not consent to receive prerecorded or automated messages to his Cell Number.

17. Plaintiff did not consent to receive telephone calls via ATDS.

18. The Cell Number is not associated with a business.

**Calls to Plaintiff**

19. On or about September 29, 2022, at 1:53 pm, Plaintiff received a call presenting caller ID (480)352-1462.

20. Plaintiff was greeted by an artificial prerecorded voice which said “My name is Becky from Senior Benefits. How are you today?”

21. To which Plaintiff replied “Hello Robot. How are you?”

22. The recording then proceeded saying “I’m fine, thank you. This call is about a new state regulated final expense insurance plan that covers a hundred percent of Bur

1 funeral and cremation expenses. It is specifically designed for people on fixed income and  
2 social security. Would you like to learn more about it?"

3 23. Plaintiff is a frequent recipient of similar obnoxious and frustrating pre-recorded  
4 calls, wanting to put a stop to them, he played along with the call in order to determine the  
5 caller's identity and demand that they place his number on their internal do not call list.

6 24. Eventually the recording transferred Plaintiff to an individual how identified  
7 himself as Adam.

8 25. After verifying some qualifying information, Adam transferred Plaintiff to an  
9 individual who identified themselves as Shanty.

10 26. Shanty spent some time verifying the qualifying information from Plaintiff and  
11 eventually transferred Plaintiff to someone who identified themselves as Anita Stepchuk.

12 27. Anita advertised final expense plans to and their benefits to Plaintiff.

13 28. Once Plaintiff believed he had identified the company responsible for the robo-  
14 call he asked Anita to place him on their internal do not call list, and to sent him a copy of  
15 their internal do not call policy.

16 29. Anita seemed surprised to be asked for Supermarket's internal do-not-call  
17 policies, and how to send them to plaintiff, she did not ask for his contact information or  
18 where to send them.

19 30. Plaintiff avers and therefor believes Anit seemed surprised because she was not  
20 trained in the existance or usage of the policy, or to make it available on demand.

21 **Defendants' Use of an ATDS**

22 31. Insurance Supermarket, Inc.'s representatives used the identical or nearly  
23 identical scripts.

24 32. Insurance Supermarket, Inc.'s representatives purposefully attempted to conceal  
25 the identity of their company.

26 33. For these reasons, Plaintiff believes the telemarketers used an ATDS to generate  
27 leads for Defendant's life insurance services.  
28

1           34. The calls were conducted using an Automatic Telephone Dialing System  
2 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the capacity  
3 to store numbers to be called using a random or sequential number generator or to produce  
4 numbers to be called using a random or sequential number generator: *Facebook, Inc. v. Duguid*,  
5 141 S. Ct. 1163, 1167 (2021).

6           35. The Third Circuit recently clarified that “Congress envisioned a broad  
7 understanding of ‘equipment’” that constitutes an ATDS. It also clarified that the analysis of  
8 whether an ATDS was used in violation of the TCPA centers around “whether the  
9 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v. Navient Sols.,*  
10 *Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that Congress intended to  
11 “ban all autodialed calls” because Congress “found autodialer technology to be uniquely  
12 harmful”: *Id.* at 879 (cleaned up).

13           36. In enacting the ATDS prohibition, the Third Circuit cited favorably to  
14 Congressional understanding “that telemarketers could transform ordinary computers into  
15 autodialers through minor and inexpensive modifications,” including by “relying on  
16 computerized databases containing telephone numbers during their dialing campaigns”: *Id.*  
17 at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS prohibition,  
18 Congress intended to remedy the problems caused by callers using computer software to dial  
19 numbers randomly or sequentially from a list or database: *Id.*

20           37. The system(s) that Defendants used to place the calls to Plaintiff is/are an ATDS  
21 because it would be illogical to dial a number manually, have Plaintiff answer the phone, and  
22 only then connect Plaintiff to a human being.

23           38. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This  
24 supports the inference that Defendants used an ATDS, such as one that “use[s] a random  
25 [or sequential] number generator to determine the order in which to pick phone numbers  
26 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

27           39. Other courts have held, post-Facebook, that allegations similar to those herein of  
28 the absence of a relationship between the parties, and the random nature of the automation

1 device (such as the ability to randomly generate caller ID numbers), are all indicia of use of a  
2 random or sequential dialing device. This gives rise to the inference at the pleadings stage  
3 that an ATDS was used to make the calls: *Camunas v. Nat'l Republican Senatorial Comm.*, No.  
4 21-1005, 2021 U.S. Dist. LEXIS 100125 at \*11 (E.D. Pa. May 26, 2021).

5 40. No facts exist here to support the conclusion that Defendants was calling from a  
6 curated list of his past customers. In contrast to a company that dials calls en masse to  
7 multiple individuals from a list of telephone numbers (as here), a company that calls its  
8 existing customers utilizing an imported customer list does not place calls using an ATDS.  
9 Such calling uses a database targeting existing customers' information rather than computer-  
10 generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at 881–882.

11 41. Plaintiff is ignorant of the exact process by which the system(s) used by  
12 Defendants operates other than by drawing the reasonable inference and alleging that the  
13 system(s) stores or produces telephone numbers randomly or possibly sequentially based on  
14 the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as at least  
15 one district court explained, “The newly clarified definition of an ATDS is more relevant to  
16 a summary judgment motion than at the pleading stage”: *Gross v. GG Homes, Inc.*, No. 3:21-  
17 cv-00271-DMS-BGS, 2021 WL 2863623, at \*7 (S.D. Cal. July 8, 2021); accord *Miles v.*  
18 *Medicredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo. July 14, 2021).

### 19 **Defendants' Conduct Was Knowing and Willing**

20 42. Defendants intentionally called Plaintiff multiple times in order to advertise their  
21 services to Plaintiff.

22 43. Defendants knew his actions were in violation of the TCPA and willfully  
23 continued his conduct.

### 24 **The TCPA Prohibits All Automated Calls to Protected Numbers**

25 44. The TCPA makes it unlawful "to make any call (other than a call made for  
26 emergency purposes or made with the prior express consent of the called party) using an  
27 automated telephone dialing system or an artificial or prerecorded voice ... to any telephone  
28 number assigned to a ... paging service, cellular telephone service, specialized mobile radio

1 service, or other radio common carrier service, or any service for which the party is charged  
2 for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

3 45. Congress singled out these services for special protection because Congress  
4 realized their special importance in terms of consumer privacy (as is the case with cellular  
5 phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356, (2020) (Gorsuch, J. &  
6 Thomas, concurring in part and dissenting in part).

7 46. According to findings by the Federal Communications Commission ("FCC"),  
8 which is the agency Congress vested with the authority to issue regulations implementing the  
9 TCPA, such messages are prohibited because, as Congress found, automated or prerecorded  
10 messages are a greater nuisance and invasion of privacy than live ones, are costly, and are  
11 inconvenient.

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

14 48. These causes of action apply to users of any of four protected services (pager,  
15 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch system], or  
16 another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or any service,  
17 including residential, VoIP, and landline services, for which the called party is charged: *Lynn,*  
18 *Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md. 2013).

19 49. "Non-Emergency pre-recorded voice or autodialed calls to the destinations  
20 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express consent  
21 of the called party."

22 50. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone  
23 solicitation to ... [a] residential telephone subscriber who has registered his or her telephone  
24 number on the National Do-Not-Call Registry of persons who do not wish to receive  
25 telephone solicitations that is maintained by the Federal Government" and defines  
26 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of  
27 encouraging the purchase or rental of, or investment in, property, goods, or services, which  
28 is transmitted to any person...": U.S.C. § 227(f)(15).



1           51. The FCC also recognized that “wireless customers are charged for incoming calls  
2 whether they pay in advance or after the minutes are used”: In re Rules and Regulations  
3 Implementing the Tel. Consumer Prot. Act of 1991, CG Docket No. 02-278, Report and  
4 Order, 18 FCC Rcd. 14014, 14115, ¶ 165 (2003).

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

7 Specifically, it ordered:

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

16           53. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,  
17 27 FCC Rcd. 1830, 1844 (2012) (footnotes omitted).

18           54. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery  
19 restrictions. It states, “No person or entity may ... [e]xcept as provided ... initiate any  
20 telephone call ... using an automatic telephone dialing system or an artificial or prerecorded  
21 voice.”

22           55. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: “emergency  
23 telephone line,” “guest room or patient room of a hospital, health care facility, elderly home,  
24 or similar establishment,” and/or “cellular telephone service.” 47 C.F.R. § 64.1200(a)(2)  
25 further prohibits entities from “initiat[ing], or caus[ing] to be initiated, any telephone call that  
26 includes or introduces an advertisement or constitutes telemarketing, using an automatic  
27 telephone dialing system or an artificial or prerecorded voice, to any of the lines or telephone  
28 numbers described... ”

          56. The National Do-Not-Call Registry allows consumers to register their telephone  
numbers and thereby indicate their desire to not receive telephone solicitations at those  
numbers: 47 C.F.R. § 64.1200(c)(2).



1 57. A listing on the Registry "must be honored indefinitely, or until the registration is  
2 cancelled by the consumer or the telephone number is removed by the database  
3 administrator": *Id.*

4 58. The TCPA and implementing regulations prohibit the initiation of telephone  
5 solicitations to residential telephone subscribers whose numbers are on the Registry and  
6 provide a private right of action against any entity making those calls or "on whose behalf"  
7 such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

8 59. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for  
9 telemarketing purposes to a residential telephone subscriber unless such person or entity has  
10 instituted procedures for maintaining a list of persons who request not to receive  
11 telemarketing calls made by or on behalf of that person or entity." It goes on to establish  
12 specific "minimum standards":

13 (1) "Persons or entities making calls for telemarketing purposes must have a  
14 written policy, available upon demand..."

15 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and  
16 trained in the existence and use of the do-not-call list."

17 (3) "If a person or entity making a call for telemarketing purposes ... receives a  
18 request ... not to receive calls from that person or entity, the person or entity  
19 must record the request and place the subscriber's name ... and telephone  
20 number on the do-not-call list at the time the request is made ... must honor a  
21 residential subscriber's do-not-call request within a reasonable time from the date  
22 such request is made."

23 (4) "A person or entity making a call for telemarketing purposes must provide  
24 the called party with the name of the individual caller, the name of the person or  
25 entity on whose behalf the call is being made, and a telephone number or address  
26 at which the person or entity may be contacted."

27 (5) "A person or entity making calls for telemarketing purposes must maintain a  
28 record of a consumer's request not to receive further telemarketing calls."

### Claims

#### Count One

60. Plaintiff incorporates the foregoing allegations as fully set forth herein.



**Count Three**

**Violation of the Florida Telephone Solicitation Act,  
Fla. Stat. § 501.059  
On Behalf of Plaintiff and the Florida Telephone Solicitation Act Autodial  
Class**

71. Plaintiff incorporates the foregoing allegations as fully set forth herein.

72. It is a violation of the FTSA to “make or knowingly allow a telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Fla. Stat. § 501.059(8)(a).

73. A “telephonic sales call” is defined as a “telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services, soliciting an extension of credit for consumer goods or services, or obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.” Fla. Stat. § 501.059(1)(i).

74. Defendant failed to secure prior express written consent from Plaintiff.

75. In violation of the FTSA, Defendant made and/or knowingly allowed telephonic sales calls to be made to Plaintiff and the Class members without Plaintiff’s and the Class members’ prior express written consent.

76. Defendant made and/or knowingly allowed the telephonic sales calls to Plaintiff and the Class members to be made utilizing an automated system for the selection or dialing of telephone numbers.

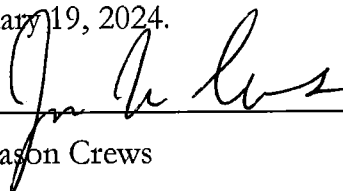
77. As a result of Defendant’s conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff was harmed and are each entitled to a minimum of \$500.00 in damages for each violation. *Id.*

**Relief Sought**

WHEREFORE, Plaintiff requests the following relief:

- A. Injunctive relief prohibiting Defendants from calling telephone numbers using an artificial or prerecorded voice and/or ATDS.
- B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(b)(3).
- C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).
- D. Because of Defendants' violations of the FTSA, Plaintiff seeks for himself \$500 in damages for each violation or—where such regulations were willfully or knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. § 227(c)(3).
- E. Such other relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED on this February 19, 2024.

  
\_\_\_\_\_  
Jason Crews