

1 Bryan K. Theis, Esq., State Bar No. 209068
Theis Law Group
2 533 Second Street Suite 400
3 Encinitas, California 92024
Telephone: (213) 261-4240
4 Facsimile: (213) 995-9830
5 Email: bryan@theislaw.com

6 Blake J. Dugger, Esq. (PHV application pending)
7 Law Offices of Stefan Coleman, PLLC
1011 W. Colter St., #236
8 Phoenix, Arizona 85013
9 Telephone: (602) 441-3704
Facsimile: (888) 498-8946
10 Email: blake@stefancoleman.com

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

13 **LUCAS AMBREZEWICZ ,**
14 **EDWARD TIMMONS, and MARK**
15 **HAIGLER**, individually and on behalf
of all others similarly situated,

16 *Plaintiffs,*

17
18 v.

19 **GDFRIEND, INC.**, a California
20 corporation, **dba Direct Home Energy**
21 **Solutions dba Green Home**
22 **Investment Program dba Powerstar**
Home Energy Solutions,

23 *Defendant.*
24

CASE No. '17CV2234 L JMA

CLASS ACTION
COMPLAINT

JURY TRIAL DEMANDED

25
26 ///
27
28

1 **CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

2 Plaintiff Lucas Ambrezewicz (“Plaintiff Ambrezewicz” or “Ambrezewicz”),
3
4 Plaintiff Edward Timmons (“Plaintiff Timmons” or “Timmons”) and Plaintiff Mark
5 Haigler (“Plaintiff Haigler” or “Haigler”) bring this Class Action Complaint and
6 Demand for Jury Trial (“Complaint”) against Defendant GDFriend, Inc. dba Direct
7 Home Energy Solutions dba Green Home Investment Program dba PowerStar
8 Home Energy Solutions (“Defendant” or “GDFriend”) to stop Defendant’s practice
9
10 of making unsolicited autodialed telephone calls to the cellular telephones of
11 consumers nationwide and to obtain redress, including injunctive relief, for all
12 persons injured by its conduct - including those on the federal Do Not Call
13 Registry. Plaintiffs, for their Complaint, allege as follows upon personal knowledge
14 as to themselves and their own acts and experiences, and, as to all other matters,
15 upon information and belief, including investigation conducted by their attorneys.
16
17

18 **NATURE OF THE ACTION**

19 1. Defendant GDFriend provides consumers with energy efficient home
20 improvement products. Such products include doors and windows, vinyl siding, air
21 conditioning units and bathtubs.
22

23 2. Unfortunately for consumers, Defendant casts its marketing net too
24 wide. That is, in an attempt to promote its business and services in the energy-
25 efficiency and home-improvement industry, Defendant conducted (and continues to
26 conduct) a wide-scale telemarketing campaign that features the making of repeated
27
28

1 unsolicited autodialed telephone calls to consumers’ cellular telephones, including
2 those that appear on the National Do Not Call Registry, without consent -- all in
3 violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the
4 “TCPA”).
5

6 3. By making the autodialed telephone calls at issue in this Complaint,
7 Defendant caused Plaintiffs and the members of the Classes actual harm and
8 cognizable legal injury. This includes the aggravation, annoyance, and nuisance and
9 invasions of privacy that result from the receipt of such calls in addition to a loss of
10 value realized for the monies consumers paid to their wireless carriers for the
11 receipt of such calls. Furthermore, the calls interfered with Plaintiffs’ and the other
12 Class members’ use and enjoyment of their cellular telephones, including the
13 related data, software, and hardware components. Defendant also caused substantial
14 injury to their phones by causing wear and tear on their property, consuming battery
15 life, and appropriating cellular data and minutes.
16
17
18

19 4. The TCPA was enacted to protect consumers from unsolicited
20 telephone calls like those alleged in this case. In response to Defendant’s unlawful
21 conduct, Plaintiffs file the instant lawsuit and seek an injunction requiring
22 Defendant to cease all unsolicited telephone calling activities to consumers as
23 complained of herein and an award of statutory damages to the members of the
24 Classes under the TCPA, together with costs and reasonable attorneys’ fees.
25
26
27

28 **PARTIES**

1 5. Plaintiff Ambrezewicz is a natural person and a citizen of the State of
2 California, residing in the City of Colton.

3 6. Plaintiff Timmons is a natural person and a citizen of the State of
4 California, residing in the City of Yucaipa.
5

6 7. Plaintiff Haigler is a natural person and a citizen of the State of
7 California, residing in the City of San Diego.
8

9 8. Defendant GDFriend is a corporation organized and existing under the
10 laws of the State of California with headquarters located at 14252 Culver Dr., Ste.
11 A213, Irvine, CA 92604.¹
12

13 **JURISDICTION AND VENUE**

14 9. This Court has federal subject matter jurisdiction under 28 U.S.C. §
15 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C.
16 § 227 *et seq.*, which is a federal statute.
17

18 10. The Court has personal jurisdiction over Defendant because it solicits
19 significant business in this District, has entered into business to business contracts
20 in this District, the calls at issue were directed to and received in this District, and
21 the unlawful conduct alleged in this Complaint occurred in and/or was directed to
22 this District.
23
24

25 11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
26 because Defendant does business in this District and the causes of action arose, in
27

28 ¹ California corporate number C2565500.

1 substantial part, in this District. Venue is additionally proper as Plaintiff Haigler
2 resides in this District.

3 **COMMON FACTUAL ALLEGATIONS**

4
5 12. As discussed *supra*, Defendant provides consumers with energy-
6 efficient home improvement products.

7
8 13. As explained by the Federal Communications Commission (“FCC”) in
9 its 2012 order, the TCPA requires “*prior express written consent* for all autodialed
10 or prerecorded telemarketing calls to wireless numbers and residential lines.” *In the*
11 *Matter of Rules and Regulations Implementing the Telephone Consumer Protection*
12 *Act of 1991*, CG No. 02-278, FCC 12-21, 27 FCC Rcd. 1830 ¶ 2 (Feb. 15, 2012).

13
14 14. Yet in violation of this rule, Defendant fails to obtain any prior express
15 written consent to make these autodialed calls to cellular telephone numbers.

16
17 15. Consumer complaints about Defendant’s invasive and repetitive calls
18 are legion. As a sample, consumers have complained as follows:

- 19
- 20 • Called my DNC home line. No message. Blocked the number.²
 - 21 • Called tried to sell energy upgrades. Told him not interested please
22 take me of call list. Stated he did not have list I should change my
23 number. Told him what he could do and I hung up. He called back
24 used a swear word at me and hung up!³
 - 25 • Same thing happened to me! After I told him to take us off the list he
26 said he didn’t have a list and I said thanks stop calling bye and he

27 ² <http://800notes.com/Phone.aspx/1-949-728-5353>.

28 ³ *Id.*

1 called back and said he will call who he damn well pleases. Wow!⁴

- 2 • Interesting addition I have been getting so many calls from this number
- 3 that I decided to even entertain what ever they were trying to sell. First
- 4 they keep asking for Jerome. My name is Mike. I said yes this is him
- 5 I am interested and guy just hung up lol. So they don't even want to
- 6 sell anything. What is the angle here??⁵
- 7 • NO TALK, TWICE IN ABOUT A MINUTE THEY CALLED⁶
- 8 • Both my home and my mobile phone are on the DNC list, but I
- 9 continue to get repeated telemarketing calls from this business. They
- 10 claim they were asked to call me by the Green Home Investment
- 11 Program ... I asked what the company was. He said Direct Home
- 12 Energy Solutions and that they were being asked to call people b the
- 13 Green Home Investment Program ...⁷
- 14 • Called my cell, and I don't answer if I don't recognize the number.⁸

15 16. In placing the calls that form the basis of this Complaint, Defendant

16 utilized an automatic telephone dialing system ("ATDS") in violation of the TCPA.

17 Specifically, the hardware and software used by Defendant has the capacity to

18 generate and store random numbers, and/or receive and store lists of telephone

19 numbers, and to dial such numbers, *en masse*, in an automated fashion without

20 human intervention. Defendant's automated dialing equipment also is, or includes

21 features substantially similar to, a predictive dialer, meaning that it is capable of

22 making numerous phone calls simultaneously and automatically connecting

23

24 ⁴ *Id.*

25 ⁵ *Id.*

26 ⁶ <http://whocallsme.com/Phone-Number.aspx/9497285353>.

27 ⁷ <https://www.yelp.com/biz/direct-home-energy-solutions-santa-ana>

28 ⁸ <http://800notes.com/Phone.aspx/1-949-728-5353>.

1 answered calls to then available callers and disconnecting the rest (all without
2 human intervention).

3 17. Furthermore, Defendant calls customers who have no “established
4 business relationship” with Defendant and who are registered on the Do Not Call
5 Registry.
6

7 18. When placing these calls to consumers, Defendant failed to obtain
8 prior express written consent as required by the TCPA from cellular telephone
9 owners/users to make such calls.
10

11 19. Finally, even when consumers try to opt out of future calls by
12 requesting to never be called again, Defendant continues to call them.
13

14 20. Defendant knowingly made (and continues to make) telemarketing
15 calls without the prior express written consent of the call recipients and knowingly
16 continues to call them after requests to stop. As such, Defendant not only invaded
17 the personal privacy of Plaintiffs and other members of the putative Classes but also
18 intentionally and repeatedly violated the TCPA.
19
20

21 21. To hide its true identity when placing unwanted autodialed solicitation
22 calls, Defendant uses a variety of trade names in connection with a variety of
23 websites. For example, Defendant uses the trade names 1.) Direct Home Energy
24 Solutions; 2.) Green Home Investment Program; and 3) Powerstar Home Energy
25 Solutions--and Defendant owns and/or operates their websites. As shown below,
26 each of these trade names are connected to Defendant via nearly identical websites
27
28

1 and each website is registered in Defendant's name. Furthermore, each of these
2 websites and/or trade names were given to the at least one of the plaintiffs in this
3 action.

4
5 22. Plaintiff Haigler received phone calls from an entity claiming to be
6 Direct Home Energy Solutions. This entity is associated with the website
7 <http://directgogreen.com>. Defendant is the registrant of the website
8 <http://directgogreen.com>.

```
9  
10 The Registry database contains ONLY .COM, .NET, .EDU domains and  
11 Registrars.  
12 Domain Name: DIRECTGOGREEN.COM  
13 Registrar URL: http://www.godaddy.com  
14 Registrant Name:  
15 Registrant Organization: GDFriend, Inc.  
16 Name Server: NS07.DOMAINCONTROL.COM  
17 Name Server: NS08.DOMAINCONTROL.COM  
18 DNSSEC: unsigned
```

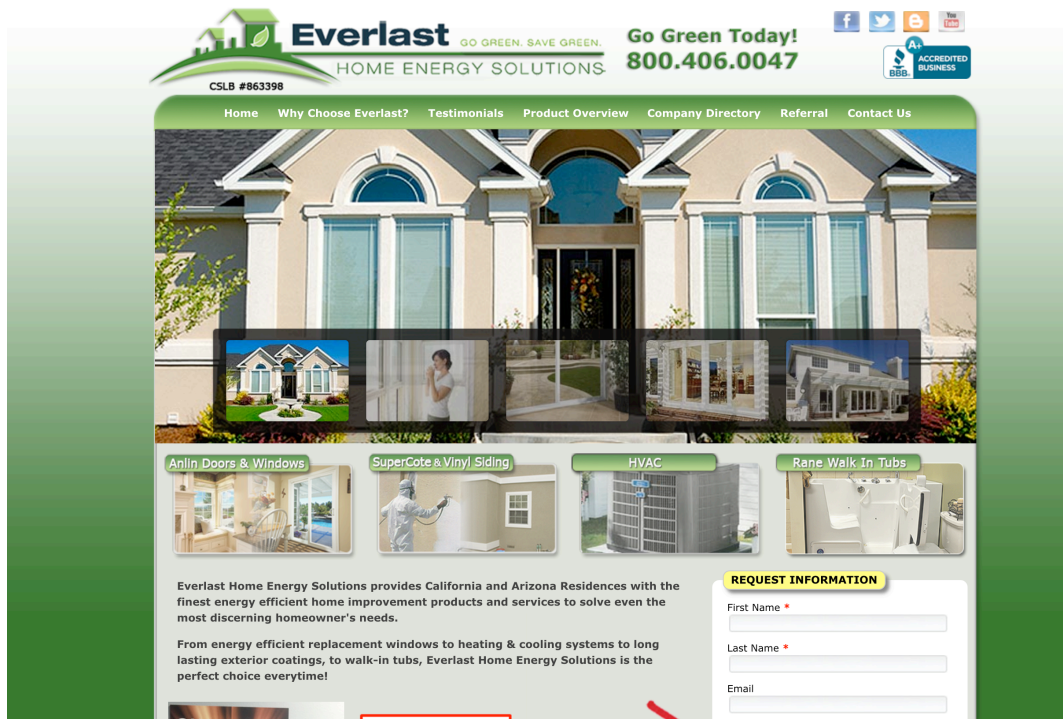
9

14 23. Below is a screenshot of www.directgogreen.com.



28 ⁹ <http://domaintz.com/tools/whois/directgogreen.com>

24. Defendant also uses the name Everlast Home Energy Solutions whose website everlastgogreen.com is nearly identical to Direct Home Energy Solutions' website directgogreen.com. Both websites are registered to Defendant.



25. Defendant's representative informed Plaintiff Timmons that its website was powerstargogreen.com. Defendant is also the registrant for the similarly looking website <http://powerstargogreen.com>.

The Registry database contains ONLY .COM, .NET, .EDU domains and Registrars.
 Domain Name: POWERSTARGOGREEN.COM
 Registrar URL: <http://www.godaddy.com>
 Registrant Name: Ethan Sundilson
 Registrant Organization: GDFriend, Inc.
 Name Server: NS07.DOMAINCONTROL.COM
 Name Server: NS08.DOMAINCONTROL.COM
 DNSSEC: unsigned



10

¹⁰ <http://domaintz.com/tools/whois/powerstargogreen.com>

1 Below is a screenshot of www.powerstargogreen.com, which is nearly identical to
2 directogogreen.com and everlastgogreen.com



15 26. Defendant is also the registrant for www.ghip.org:¹¹ Defendant's
16 representative informed Plaintiff Ambrezewicz that its website was ghip.org.
17

18 Registrant Name: Gregory Friend
 19 Registrant Organization: Gregory Friend
 Registrant Street: 14252 Culver Dr #A213
 Registrant City: Irvine
 Registrant State/Province: California
 Registrant Postal Code: 92604
 Registrant Country: US
 Registrant Phone: +1.3235435884
 Registrant Phone Ext:
 Registrant Fax:
 Registrant Fax Ext:
 Registrant Email: ethans@everlastgogreen.com
 Registry Admin ID: C188037320-LROR

12

24 Below is a screenshot of www.ghip.org.
25
26

27 ¹¹ Gregory Friend is associated with GDFriend, Inc.

28 ¹² <http://domaintz.com/tools/whois/ghip.org>

Call: 949-537-7809



HOME

HOW GHIP WORKS

Areas Served

Southern California

Central Valley

CONTACT



27. Together, these websites work in such a manner to feed leads to Defendant in order to secure business and ultimately increase its bottom line.

FACTS SPECIFIC TO PLAINTIFF AMBREZEWICZ

28. On September 27, 2013, Plaintiff Ambrezewicz registered his cellular telephone number on the National Do Not Call Registry to avoid receiving unsolicited telemarketing calls.

29. On or about May 29, 2017 Plaintiff Ambrezewicz began receiving unsolicited autodialed calls on his cellular telephone from telephone number 714-205-9008.

30. On June 8, 2017 Plaintiff Ambrezewicz received a call on his cellular phone from the 714-205-9008 number. When Plaintiff Ambrezewicz answered this call he heard a pause at the beginning before an agent began to speak. Such pause

1 is indicative of the use of an automated telephone dialing system. The purpose of
2 the call to Plaintiff Ambrezewicz was to solicit his business. Plaintiff Ambrezewicz
3 demanded that the person stop calling him and to add his number to its internal do
4 not call list.
5

6 31. Despite Plaintiff Ambrezewicz's request for the calls to stop, he
7 received another autodialed call from the 714-205-9008 number on his cellular
8 phone on June 9, 2017. Plaintiff Ambrezewicz answered and again demanded that
9 the person not call him again. During this call, out of frustration and for the
10 purpose of getting the calls to stop, Plaintiff Ambrezewicz asked for details
11 regarding the person's company, and was told that the person was calling on behalf
12 of the "Green Home Investment Project". Plaintiff Ambrezewicz was also told by
13 the caller that its website was ghip.org.
14
15
16

17 32. Again, on July 7, 2017, he received another autodialed call on his
18 cellular telephone from telephone number 909-318-0496. As Plaintiff did with the
19 previous two calls, he asked that the person not call him again.
20

21 33. GDFriend is the owner and/or user of the 714-205-9008 number and
22 the 909-318-0496 number.
23

24 34. All of GDFriend's calls to Plaintiff are in violation of the Do Not Call
25 Registry regulations because over 30 days had passed since Plaintiff Ambrezewicz
26 registered his telephone number on the Do Not Call Registry.
27
28

1 41. Despite Plaintiff Timmons' second request for the calls to stop, he
2 received another autodialed call on his cellular phone on July 3, 2017 from the 909-
3 699-9021 number. Again, Plaintiff asked the person to stop calling him.

4 42. Later in the day Plaintiff Timmons received yet another autodialed call
5 on his cellular phone from the 909-699-9021 number. Plaintiff Timmons answered
6 this call and again asked that the calls stop.

7 43. Plaintiff Timmons received another autodialed call on his cellular
8 phone from the 909-699-9021 number on July 5, 2017. Plaintiff Timmons
9 answered the call and asked whom the agent worked for. Plaintiff Timmons was
10 given the website powerstargogreen.com. As with the previous calls, Plaintiff
11 Timmons again asked that the person stop calling him. Powerstargogreen.com is
12 registered to GDFriend.

13 44. Plaintiff Timmons received two more calls from the 909-699-9021
14 number on July 15, 2017 and July 22, 2017. These calls were not answered.

15 45. All of GDFriend's calls to Plaintiff Timmons are in violation of the Do
16 Not Call Registry regulations because over 30 days had passed since Plaintiff
17 Timmons registered his telephone number on the Do Not Call Registry.

18 46. Despite Plaintiff Timmons' repeated requests for GDFriend to stop
19 calling him, GDFriend continued to contact or attempt to contact him.

20
21
22
23
24
25
26 **FACTS SPECIFIC TO PLAINTIFF HAIGLER**

1 47. On July 2, 2003, Plaintiff Haigler registered his cellular telephone
2 number on the National Do Not Call Registry to avoid receiving unsolicited
3 telemarketing calls on his cellular telephone.
4

5 48. On or about January of 2017, and more than 30 days after his number
6 was registered on the National Do Not Call Registry, Plaintiff Haigler started to
7 receive a series of harassing telemarketing calls from telephone number 949-728-
8 5353.
9

10 49. Each time Plaintiff Haigler answered a call from the 949-728-5353
11 number on his cellular telephone, he heard a pause before being connected to a live
12 representatives. Such pause is indicative of the use of an autodialer.
13

14 50. After answering a call from the 949-728-5353 number, a representative
15 came on the line and claimed to be calling on behalf of DirectHome Energy
16 Solutions.
17

18 51. Each time Plaintiff Haigler answered a call on his cellular telephone
19 from the 5353 Number, the person on the other line asked for a “Jimmy.”
20

21 52. Each time Plaintiff Haigler answered a call from the 949-728-5353
22 number on his cellular telephone, he informed the caller that he is not associated
23 with the “Jimmy” he or she is looking for. Furthermore, each time Plaintiff Haigler
24 answered a call from the 949-728-5353 number, he directly told the person on the
25 end of the line to stop calling him.
26
27
28

1 53. On at least one of the calls that Plaintiff Haigler answered from the
2 949-728-5353 number, the caller indicated that the purpose of the call was to solicit
3 Plaintiff Haigler to utilize the caller's home-improvement services.
4

5 54. On at least one occasion, out of frustration and for the sole purpose of
6 getting the calls to stop, Plaintiff Haigler made an appointment for "Jimmy" to have
7 the caller's company come to Plaintiff Haigler's house.
8

9 55. Despite Plaintiff Haigler's request for the autodialed calls to his
10 cellular telephone to stop, he continued to receive calls from the 949-728-5353
11 number for the purpose of soliciting his business.
12

13 56. For example, Plaintiff Haigler received unwanted solicitation calls
14 from the 949-728-5353 number on the following dates: 1.) January 4, 2017; 2.)
15 January 5, 2017 at 10:01 a.m. and 12:02 p.m.; 3.) January 9, 2017; 4.) January 17,
16 2017; and January 23, 2017.
17

18 57. All of GDFriend's calls to Plaintiff Haigler are in violation of the Do
19 Not Call Registry regulations because over 30 days had passed since Plaintiff
20 Haigler's number was registered on the Do Not Call Registry.
21

22 58. Despite Plaintiff Haigler's repeated requests for GDFriend to stop
23 calling him, GDFriend continued to contact or attempt to contact him.
24

25 59. Plaintiff Haigler never consented in writing or otherwise to receive
26 autodialed telephone calls on his cellular telephone from GDFriend.
27
28

1 60. Plaintiffs have never consented in writing or otherwise to receive
2 autodialed telephone calls on his cellular telephone from GDFriend.

3 61. Plaintiffs do not have a relationship with GDFriend, have never
4 provided their telephone number to GDFriend, and have never requested that
5 GDFriend place calls to them or offer them its services. Simply put, Plaintiffs have
6 never provided any form of prior express written consent to GDFriend to place calls
7 to them and have no business relationship with GDFriend.
8

9 62. GDFriend at all times is and was aware that the above-described
10 autodialed telephone calls were and are being made to consumers like the Plaintiffs
11 who had not consented to receive them and whose telephone numbers have been
12 registered with the National Do Not Call Registry.
13

14 63. By making unauthorized autodialed calls to consumers' cellular
15 telephones as alleged herein, GDFriend has caused consumers actual, concrete harm
16 and annoyance. In the present case, a consumer could be subjected to many
17 unsolicited autodialed telephone calls, as GDFriend's opt-out system does not work.
18

19 64. In order to redress these injuries, Plaintiffs, on behalf of themselves
20 and the Classes of similarly situated individuals, brings suit under the Telephone
21 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits unsolicited
22 autodialed telephone calls to cellular telephones.
23

24 65. On behalf of the Classes, Plaintiffs seek an injunction requiring
25 GDFriend to cease all unauthorized autodialed telephone calling activities,
26
27
28

1 declaratory relief establishing that GDFriend's calls violated the TCPA, and an
2 award of statutory damages to the class members, together with costs and
3 reasonable attorneys' fees.
4

5 CLASS ALLEGATIONS

6 66. Plaintiffs bring this action pursuant to Federal Rule of Civil Procedure
7 23(a), (b)(2), and (b)(3) on behalf of themselves and four Classes defined as
8 follows:
9

10 **Autodialed No Consent Class:** All persons in the United States who
11 from four years prior to the filing of the initial complaint in this action
12 to the present: (1) Defendant (or a third person acting on behalf of
13 Defendant) called; (2) on the person's cellular telephone number; (3)
14 for the purpose of marketing Defendant's products and services; and
15 (4) for whom Defendant claims it obtained prior express written
consent in the same manner as Defendant claims it obtained prior
express written consent to call the Plaintiffs.

16 **Autodialed Stop Call Class:** All persons in the United States who
17 from four years prior to the filing of the initial complaint in this action
18 to the present: (1) Defendant (or a third person acting on behalf of
19 Defendant) called, (2) on the person's cellular telephone number, (3)
20 for the purpose of marketing Defendant's products and services, (4)
after the person informed Defendant that s/he no longer wished to
receive calls from Defendant.

21 **Do Not Call Registry Class:** All persons in the United States who (1)
22 Defendant (or a third person acting on behalf of Defendant) called
23 more than one time on his/her cellular telephone; (2) within any 12-
24 month period (3) where the cellular telephone number had been listed
25 on the National Do Not Call Registry for at least thirty days; (4) for the
26 purpose of marketing Defendant's products and services; and (5) for
27 whom Defendant claims it obtained prior express consent in the same
28 manner as Defendant claims it obtained prior express consent to call
the Plaintiffs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Stop Calling Do Not Call Class: All individuals in the United States (1) who had his or her telephone number(s) registered with the National Do Not Call Registry for at least thirty days; (2) who received more than one telephone call made by or on behalf of Defendant within a 12-month period; and (3) who requested that Defendant not call them again (4) and received at least two additional calls from Defendant more than thirty (30) days after requesting for the calls to stop.

67. The following people are excluded from the Classes: any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Classes; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs' counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons. Plaintiffs anticipate the potential need to amend the Class Definitions following the completion of class discovery regarding the size and scope of the Classes and the manner by which Defendant claims it obtained prior express consent.

68. **Numerosity:** The exact sizes of the Classes are unknown and not available to Plaintiffs at this time, but individual joinder is impracticable. On information and belief, Defendant made telephone calls to thousands of consumers

1 who fall into the definition of the Classes. Members of the Classes can be easily
2 identified through Defendant's records and by reference to other objective criteria.

3 69. **Commonality:** There are several questions of law and fact common to
4 the claims of Plaintiffs and the Classes on which every class member's claim will
5 either succeed or fail, and which will be proven using common evidence. Such
6 common questions for the Classes include, without limitation:
7

- 8
- 9 (a) Whether Defendant's conduct violated the TCPA;
 - 10 (b) Whether Defendant systematically made telephone calls to
11 individuals who did not provide Defendant and/or its agents with their
12 prior express written consent to receive such phone calls;
 - 13 (c) Whether Defendant made the calls with the use of an ATDS;
 - 14 (d) Whether Defendant systematically made multiple telephone
15 calls within the same 12-month period to consumers who telephone
16 numbers were registered with the National Do Not Call Registry;
 - 17 (e) Whether members of the Classes are entitled to treble damages
18 based on the willfulness of Defendant's conduct; and
 - 19 (f) Whether Defendant systematically made telephone calls to
20 consumers after they explicitly asked not to be called by Defendant.
21
22
23
24

25 70. **Typicality:** Plaintiffs' claims are typical of the claims of the other
26 members of the Classes. Plaintiffs are members of the Classes, and if Defendant
27 violated the TCPA to call Plaintiffs then it violated the TCPA to call the other class
28

1 members. Plaintiffs and the Classes sustained damages as a result of Defendant's
2 uniform wrongful conduct during transactions with Plaintiffs and the Classes.

3 71. **Adequate Representation:** Plaintiffs will fairly and adequately
4 represent and protect the interests of the Classes, and has retained counsel
5 competent and experienced in complex class actions. Plaintiffs have no interest
6 antagonistic to those of the Classes, and Defendant has no defenses unique to
7 Plaintiffs.
8
9

10 72. **Policies Generally Applicable to the Classes:** This class action is
11 appropriate for certification because Defendant has acted or refused to act on
12 grounds generally applicable to the Classes as respective wholes, thereby requiring
13 the Court's imposition of uniform relief to ensure compatible standards of conduct
14 toward the Class members, and making final injunctive relief appropriate with
15 respect to the Classes as respective wholes. Defendant's practices challenged herein
16 apply to and affect the Class members uniformly, and Plaintiffs' challenge of those
17 practices hinges on Defendant's conduct with respect to the Classes as respective
18 wholes, not on facts or law applicable only to Plaintiffs.
19
20
21

22 73. **Predominance:** The common questions of law and fact set forth above
23 predominate over any individual issues. Whether Defendant properly obtained prior
24 express consent to call and whether Defendant used an ATDS go to the very heart
25 of the case and are facts on which all class members' claims hinge. As such, the
26 common issues predominate over any supposed individualized issues.
27
28

1 74. **Superiority and Manageability:** This case is also appropriate for
2 class certification because class proceedings are superior to all other available
3 methods for the fair and efficient adjudication of this controversy given that joinder
4 of all parties is impracticable. The damages suffered by the individual members of
5 the Classes will likely be relatively small, especially given the burden and expense
6 of individual prosecution of the complex litigation necessitated by Defendant's
7 actions. Thus, it would be virtually impossible for the individual members of the
8 Classes to obtain effective relief from Defendant's misconduct. Even if members of
9 the Classes could sustain such individual litigation, it would still not be preferable
10 to a class action, because individual litigation would increase the delay and expense
11 to all parties due to the complex legal and factual controversies presented in this
12 Complaint. By contrast, a class action presents far fewer management difficulties
13 and provides the benefits of single adjudication, economy of scale, and
14 comprehensive supervision by a single court. Economies of time, effort and
15 expense will be fostered and uniformity of decisions ensured.

16
17
18
19
20
21 **FIRST CAUSE OF ACTION**

22 **Violation of 47 U.S.C. § 227 *et seq.***

23 **(On behalf of Plaintiffs and the Autodialed No Consent Class)**

24 75. Defendant made unsolicited and unwanted autodialed telephone calls
25 to telephone numbers belonging to Plaintiffs and the other members of the
26 Autodialed No Consent Class—without their prior express written consent.
27

1 76. Defendant's calls were made for the purpose of marketing Defendant's
2 energy-efficient home improvement services.

3 77. At no time did Defendant obtain prior express written consent that
4 disclosed to the called party that the called party consented to be called with an
5 automatic telephone dialing system or prerecorded voice or that providing such
6 consent was not a condition (direct or indirect) of any purchase of any goods or
7 services.
8

9
10 78. Further, Defendant made the telephone calls using equipment that had
11 the capacity to store or produce telephone numbers to be called using a random or
12 sequential number generator, and/or receive and store lists of phone numbers, and
13 to dial such numbers, *en masse*. Defendant utilized equipment that made the
14 telephone calls to Plaintiffs and other members of the Autodialed No Consent Class
15 simultaneously and without human intervention.
16

17
18 79. By making unsolicited telephone calls to Plaintiffs and members of the
19 Autodialed No Consent Class's cellular telephones without prior express written
20 consent, and by utilizing an ATDS, Defendant violated 47 U.S.C. §
21 227(b)(1)(A)(iii).
22

23 80. As a result of Defendant's unlawful conduct, Plaintiffs and the
24 members of the Autodialed No Consent Class suffered actual damages in the form
25 of monies paid to receive the unsolicited telephone calls on their cellular telephones
26
27
28

1 and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of
2 \$500 in damages for each such violation of the TCPA.

3 81. In the event that the Court determines that Defendant's conduct was
4 willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the
5 amount of statutory damages recoverable by Plaintiffs and the other members of the
6 Autodialed No Consent Class.
7

8
9 **SECOND CAUSE OF ACTION**
10 **Violation of 47 U.S.C. § 227 *et seq.***
11 **(On behalf of Plaintiffs and the Autodialed Stop Call Class)**

12 82. Plaintiffs incorporate and re-allege paragraphs 1-74 as if fully set forth
13 herein.

14 83. Defendant made unsolicited and wanted telemarketing calls to
15 telephone numbers belonging to Plaintiffs and the other members of the Autodialed
16 Stop Call Class on their cellular telephone *after* the person had informed Defendant
17 that he or she no longer wished to receive such calls from Defendant.
18

19 84. Defendant made the telephone calls using equipment that had the
20 capacity to store or produce telephone numbers to be called using a random or
21 sequential number generator, and/or receive and store lists of phone numbers, and
22 to dial such numbers, *en masse*.
23

24 85. By making unsolicited telephone calls to Plaintiffs and members of the
25 Autodialed Stop Call Class's cellular telephones after they requested to no longer
26
27
28

1 receive calls, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by continuing to call
2 them without prior express written consent.

3 86. As a result of Defendant’s unlawful conduct, Plaintiffs and the
4 members of the Autodialed Stop Call Class suffered actual damages in the form of
5 monies paid to receive the unsolicited telephone calls on their cellular telephones
6 and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, inter alia, a minimum of
7
8 \$500 in damages for each such violation of the TCPA.
9

10 87. Should the Court determine that Defendant’s conduct was willful and
11 knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of
12 statutory damages recoverable by Plaintiffs and the other members of the
13 Autodialed Stop Call Class.
14

15 **THIRD CAUSE OF ACTION**
16 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.***
17 **(On behalf of Plaintiffs and Do Not Call Registry Class)**

18 88. Plaintiffs incorporate and re-allege paragraphs 1-74 as if fully set forth
19 herein.
20

21 89. The TCPA, specifically 47 U.S.C. § 227(c), provides that any “person
22 who has received more than one telephone call within any 12-month period by or
23 on behalf of the same entity in violation of the regulations prescribed under this
24 subsection may” bring a private action based on a violation of said regulations,
25 which were promulgated to protect telephone subscribers’ privacy rights to avoid
26 receiving telephone solicitations to which they object.
27
28

1 90. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c),
2 provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a]
3 residential telephone subscriber who has registered his or her telephone number on
4 the national do-not-call registry of persons who do not wish to receive telephone
5 solicitations that is maintained by the federal government.”
6

7 91. 47 C.F.R. § 64.1200(e), in turn, provides that § 64.1200(c) and (d) “are
8 applicable to any person or entity making telephone solicitations or telemarketing
9 calls to wireless telephone numbers to the extent described in the Commission’s
10 Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules and Regulations
11 Implementing the Telephone Consumer Protection Act of 1991.’” (the “Report and
12 Order”).
13
14

15 92. And the Report and Order thereafter states as follows:
16

17 The Commission’s rules provide that companies making telephone
18 solicitations to residential telephone subscribers must comply with
19 time of day restrictions and must institute procedures for maintaining
20 do-not-call lists. For the reasons described above, we conclude that
21 these rules apply to calls made to wireless telephone numbers. We
22 believe that wireless subscribers should be afforded the same
23 protections as wireline subscribers.¹³

24 93. 47 C.F.R. § 64.1200(d) provides that “[n]o person or entity shall
25 initiate any call for telemarketing purposes to a residential telephone subscriber
26 unless such person or entity has instituted procedures for maintaining a list of
27 persons who request not to receive telemarketing calls made by or on behalf of that
28

¹³ 68 Fed. Reg. 44143, 44166 (July 25, 2003).

1 person or entity. The procedures instituted must meet the following minimum
2 standards:

3 (1) Written policy. Persons or entitles making calls for telemarketing
4 purposes must have a written policy, available upon demand, for
5 maintaining a do-not-call list.

6 (2) Training of personnel engaged in telemarketing. Personnel
7 engaged in any aspect of telemarketing must be informed and trained
8 in the existence and use of the do-not-call list.

9 (3) Recording, disclosure of do-not-call requests. If a person or entity
10 making a call for telemarketing purposes (or on whose behalf such a
11 call is made) receives a request from a residential telephone subscriber
12 not to receive calls from that person or entity, the person or entity
13 must record the request and place the subscriber's name, if provided,
14 and telephone number on the do-not-call list at the time the request is
15 made. Persons or entities making calls for telemarketing purposes (or
16 on whose behalf such calls are made) must honor a residential
subscriber's do-not-call request within a reasonable time from the date
such request is made. This period may not exceed thirty days from the
date of such request

17 (4) Identification of sellers and telemarketers. A person or entity
18 making a call for telemarketing purposes must provide the called party
19 with the name of the individual caller, the name of the person or entity
20 on whose behalf the call is being made, and a telephone number or
21 address at which the person or entity may be contacted. The telephone
number provided may not be a 900 number or any other number for
which charges exceed local or long distance transmission charges.

22 (5) Affiliated persons or entities. In the absence of a specific request
23 by the subscriber to the contrary, a residential subscriber's do-not-call
24 request shall apply to the particular business entity making the call (or
25 on whose behalf a call is made), and will not apply to affiliated
26 entities unless the consumer reasonably would expect them to be
advertised.

27 (6) Maintenance of do-not-call lists. A person or entity making calls
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

94. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, multiple telephone solicitations within a 12-month period to wireless telephone subscribers such as Plaintiffs and the Do Not Call Registry Class members, who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendant, as set forth in 47 C.F.R. § 64.1200(d)(3).

95. Defendant made more than one unsolicited telephone call to Plaintiffs and members of the Do Not Call Registry Class within a 12-month period without their prior express consent to receive such calls. Plaintiffs and members of the Do Not Call Registry Class never provided any form of consent to receive telephone calls from Defendant, and/or Defendant does not have a current record of consent to place telemarketing calls to them.

96. Defendant also violated 47 C.F.R. § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiffs and the Do Not Call Registry Class, without instituting procedures that comply with the regulatory minimum standards for having a written policy, available on demand, for maintaining a list of persons who request not to receive

1 telemarketing calls from them, without training its employees or personnel in the
2 use of any such internal do not call list, and in not recording and honoring do not
3 call requests made by consumers.
4

5 97. Defendant further violated 47 U.S.C. § 227(c)(5) because Plaintiffs
6 and the Do Not Call Registry Class received more than one telephone call in a 12-
7 month period made by or on behalf of Defendant in violation of 47 C.F.R. §
8 64.1200, as described above.
9

10 98. As a result of Defendant's conduct as alleged herein, Plaintiffs and the
11 Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §
12 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such
13 violations of 47 C.F.R. § 64.1200. To the extent Defendant's misconduct is
14 determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. §
15 227(c)(5), treble the amount of statutory damages recoverable by Plaintiff and the
16 members of the Do Not Call Registry Class.
17
18

19 **FOURTH CAUSE OF ACTION**
20 **Violation of 47 U.S.C. § 227 *et seq.***

21 **(On behalf of Plaintiffs and the Stop Calling Do Not Call Class)**

22 99. Plaintiffs incorporate and re-allege by reference paragraphs 1-74 as if
23 fully set forth herein.
24

25 100. Defendant violated 47 C.F.R. §64.1200 by initiating calls for
26 telemarketing purposes to residential telephone subscribers such as Plaintiff and the
27 Stop Calling Do Not Call Class who were registered on the National Do Not Call
28

1 Registry and who specifically told Defendant to stop calling them, and who
2 received two more calls within a 12-month period from Defendant at least thirty
3 (30) days after informing Defendant to stop calling them. Defendant made these
4 calls without instituting procedures that comply with the minimum regulatory
5 standards for maintaining a list of persons who request not to receive telemarketing
6 calls from them or training its personnel in the existence and use of any such list.
7

8
9 101. As a result of Defendant's unlawful conduct, Plaintiffs and the Stop
10 Calling Do Not Call Class suffered actual damages and, under section 47 U.S.C. §
11 227(c), Plaintiff and each member of the Stop Calling Do Not Call Class is each
12 entitled to receive up to \$500 in damages for each violation of 47 C.F.R. § 64.1200.
13

14 102. Should the Court determine that Defendant's conduct was willful and
15 knowing, the Court may, pursuant to Section 227(b)(3), treble the amount of
16 statutory damages recoverable by Plaintiffs and the other members of the No
17 Consent Do Not Call Class.
18

19
20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff Lucas Ambreiewicz, Plaintiff Edward Timmons,
22 and Plaintiff Haigler, on behalf of themselves and on behalf of the Classes, pray for
23 the following relief:
24

25 103. An order certifying the Classes as defined above, appointing Plaintiffs
26 Mark Haigler, Lucas Ambreiewicz and Edward Timmons as the representative's of
27 the Classes and appointing their counsel as Class Counsel.
28

1 104. A declaratory judgment declaring that Defendant's calls violated the
2 TCPA, that Defendant's equipment constitutes an automatic telephone dialing
3 system under the TCPA, that Defendant failed to obtain prior express written
4 consent to call Plaintiff or any of the Class members, that Defendant failed to
5 maintain an internal Do Not Call list and to train its personnel engaged in
6 telemarketing in the existence and use of such a list, and that Defendant failed to
7 honor stop-call requests to Plaintiffs and the members of the Autodialed Stop Call
8 Class.
9
10

11 105. An order requiring Defendant to disgorge any ill-gotten funds acquired
12 as a result of its unlawful telephone calling practices.
13

14 106. An award of actual and statutory damages, to be trebled in the event
15 the Court finds that Defendant has acted knowingly and willfully, to be paid into a
16 common fund for the benefit of the Class Members.
17

18 107. An injunction requiring Defendant and its agents to cease all
19 unsolicited telephone calling activities, to honor do not call requests, to provide a
20 domestic number for opting out, and otherwise protecting the interests of the
21 Classes.
22

23 108. An injunction prohibiting Defendant from using, or contracting the use
24 of, an automatic telephone dialing system without obtaining, and maintaining
25 records of, call recipient's prior express written consent to receive calls made with
26 such equipment.
27
28

1 109. An injunction prohibiting Defendant from contracting with any third-
2 party for marketing purposes until it establishes and implements policies and
3 procedures for ensuring the third-party’s compliance with the TCPA.
4

5 110. An injunction prohibiting Defendant from conducting any future
6 telemarketing activities until it has established an internal Do Not Call List as
7 required by the TCPA and trained its employees in the existence and use of its
8 internal Do Not Call list.
9

10 111. An award of reasonable attorneys’ fees and costs to be paid from the
11 common fund; and such other and further relief that the Court deems reasonable
12 and just.
13

14 **JURY DEMAND**

15 Plaintiffs request a trial by jury of all claims that can be so tried.
16

17 Respectfully submitted,

18
19 Dated: November 1, 2017

**LUCAS AMBREZEWICZ, EDWARD
20 TIMMONS, and MARK HAIGLER,**
individually and on behalf of all others
21 similarly situated,

22
23 By: /s/ Bryan K. Theis
24 Bryan K. Theis, Esq., State Bar No. 209068
Theis Law Group
25 533 Second Street Suite 400
26 Encinitas, California 92024
27 Telephone: (213) 261-4240
28 Facsimile: (213) 995-9830
Email: bryan@theislaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Blake J. Dugger, Esq. (PHV app. pending)
Law Offices of Stefan Coleman, PLLC
1011 W. Colter St., #236
Phoenix, Arizona 85013
Telephone: (602) 441-3704
Facsimile: (888) 498-8946
Email: blake@stefancoleman.com

Attorneys for Plaintiffs and the Classes

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

LUCAS AMBREZEWICZ, EDWARD TIMMONS, and MARK HAIGLER, individually and on behalf of others similarly situated

(b) County of Residence of First Listed Plaintiff San Bernardino (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Bryan K. Theis, Theis Law Group, 533 Second Street Suite 400, Encinitas CA 92024, (213) 261-4240; Blake J. Dugger, Law Offices of Stefan Coleman PLLC, 1011 W. Colter St., #263, Phoenix AZ 85013, (602) 441-3704

DEFENDANTS

GDFRIEND, INC., a California corporation, dba Direct Home Energy Solutions dba Green Home Investment Program dba Powerstar Home Energy Solutions,

County of Residence of First Listed Defendant Orange (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) '17CV2234 L JMA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, HABEAS CORPUS, and LABOR.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. Brief description of cause: Injunctive relief and damages for illegal telephone calls in violation of statute.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/1/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Bryan K. Theis

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [GD Friend Facing TCPA Class Action Over Unsolicited Robocalls](#)
