

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA**

**PAM GANUS, an individual, )  
GARY SMITH, an individual, and )  
all others similarly situated, )**

**v. )**

**Case No.**

**THE HENDRICK AUTOMOTIVE )  
GROUP, a foreign corporation, d/b/a )  
HENDRICK AUTO GROUP, d/b/a )  
HENDRICK CHRYSLER DODGE )  
JEEP RAM HOOVER )**

**JURY DEMANDED**

**CLASS ACTION COMPLAINT**

**COME NOW** Pam Ganus (hereinafter “Plaintiff”) and Gary Smith (hereinafter “Plaintiff”) and brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant, Hendrick Automotive Group, a foreign corporation, d/b/a Hendrick Auto Group, d/b/a Hendrick Chrysler Dodge Jeep Ram Hoover (collectively hereinafter referred to as “Defendant” or “Hendrick”) to put an end to its unlawful practice of placing unsolicited telemarketing calls to consumers nationwide. Plaintiffs, for their Complaint, allege as follows:

**INTRODUCTION**

The Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., (hereinafter “TCPA”) was enacted to protect consumers from unsolicited and

repeated telephone calls exactly like those alleged in this case. Defendant made these calls despite the fact that neither the Plaintiff(s), nor the other members of the putative Class, ever provided Defendant with their prior written express consent to be called. By making the phone calls at issue in this Complaint, Defendant caused Plaintiff(s), and the other members of the Class, actual harm, including the aggravation and nuisance that necessarily accompanies the receipt of unsolicited phone calls, wrongfully occupying their telephone lines, and the monies paid to their telephone carriers for the receipt of such calls. In addition, the calls violated their right of privacy.

Because Defendant makes and/or facilitates unsolicited pre-recorded advertising calls (“Robocalls”) to consumers without prior written express consent, Defendant has, and continues to, violate the TCPA.

In response to Defendant’s unlawful conduct, Plaintiff(s) filed the instant lawsuit seeking an injunction requiring Defendant to cease all unsolicited calling activities, as well as an award of statutory damages to the members of the Class, as provided under the TCPA, together with costs and reasonable attorneys’ fees.

## **I. PARTIES**

1. Plaintiff Pam Ganus (hereinafter “Plaintiff”) is over the age of nineteen (19), and is a resident of Shelby County, Alabama. Pam Ganus received, after approximately August 2016, one or more pre-recorded advertising calls from

Defendant without her written consent and the calls did not include the opt out mechanism required by law.

2. Plaintiff Gary Smith (hereinafter “Plaintiff”) is over the age of nineteen (19), and is a resident of Jefferson County, Alabama. Gary Smith received, after approximately August 2016, one or more pre-recorded advertising calls from Defendant without his written consent and the calls did not include the opt out mechanism required by law. Plaintiff Smith’s cellular telephone number has been listed on the Federal Trade Commission’s Do Not Call list since 2005.

3. Defendant Hendrick Automotive Group is a privately held automotive dealership group, which was initially organized in, and which operates out of, South Carolina. According to information and belief, Defendant Hendrick is a general partnership. Defendant operates over ninety dealerships in approximately 14 states, including, but not limited to, Alabama, Florida, Louisiana and Georgia<sup>1</sup>.

4. According to information and belief, Defendant Hendrick Automotive Group manages operates and does business as (“d/b/a”) Hendrick Auto Group and Hendrick Chrysler Dodge Jeep Ram of Hoover.

5. Defendant has resorted to unsolicited Robocalls to grow its customer base.

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<sup>1</sup> <http://www.hendrickauto.com/corporate.htm>

## **II. JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. §1332, because Plaintiffs and Defendant are residents of diverse states, and Plaintiffs seek up to \$1,500 for each call in violation of the TCPA which, when aggregated among a proposed class number in the thousands, exceeds the \$75,000 threshold exclusive of interests and costs.

7. This Court also has federal question jurisdiction pursuant to 28 U.S.C. §1331, as the following civil action arises pursuant to 47 U.S.C. § 227, et seq.

8. This Court has supplemental jurisdiction over any state law claims pursuant to 28 U.S.C. §1367.

9. Venue is proper in the United States District Court for the Northern District of Alabama as a substantial part of the events or omissions giving rise to the claim occurred within the jurisdiction.

## **III. FACTUAL OVERVIEW**

10. Among other things, the TCPA prohibits certain unsolicited marketing calls, and restricts the use of automatic dialers and/or pre-recorded messages.

11. Defendant Hendrick is engaged in the sale and trade of automobiles. Unfortunately, in the pursuit of selling said goods, according to information and belief, Defendant conducted, and continues to conduct, nationwide telemarketing campaigns. 47 U.S.C. § 227, et seq.

12. In order to reach more customers, Defendant used an invasive and illegal method of advertising: unsolicited telemarketing via a pre-recorded message and/or automatic dialer known as “Robocalling”.

13. Defendant, or their agents, place pre-recorded calls to consumers to advertise the sale of Defendant’s automobiles.

14. According to information and belief, Defendant made, and continues to make, these telemarketing calls to consumers statewide and nationwide without their prior written consent to do so and without the required mechanism to allow call recipients to opt out of future calls.

15. Defendant tried to comply with all rules, regulations, statutes, and declaratory rulings related to its prerecorded telemarketing calls.

16. Defendant did not comply with all rules, regulations, statutes, and declaratory rulings related to its prerecorded telemarketing calls.

17. Congress delegated to the Federal Communications Commission (FCC) the authority to make rules and regulations to implement the TCPA" and therefore its orders have the force of law. *See, e.g., Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 953 (9th Cir.2009) (citing *Chevron v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-44 (1984); 47 U.S.C. §227(b)(2)).

18. FCC rules and regulations “require prior express written consent for all ... prerecorded telemarketing calls to wireless numbers and residential lines...

.” FCC rules and regulations rules “require an automated, interactive opt-out feature at the outset of any ... artificial or prerecorded telemarketing Call that could be answered by the consumer in person and is available throughout the duration of the ... prerecorded telemarketing call.”<sup>2</sup>

19. As a result of Defendant’s unlawful issuance of pre-recorded telemarketing calls, Plaintiffs and putative class members were caused actual harm, including the aggravation and nuisance that necessarily accompanies the receipt of unsolicited pre-recorded phone calls, wrongfully occupying their telephone lines and depriving them of the use of their telephones during the duration of the wrongful pre-recorded call, causing them to waste their time and effort to listen to such wrongful pre-recorded calls, and the monies paid to their telephone carriers for the receipt of such calls. In addition, the calls violated their right of privacy.

#### **IV. PLAINTIFFS’ EXPERIENCE**

20. Plaintiffs registered his/her respective cellular telephone number on the National Do Not Call Registry.

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<sup>2</sup> “The term prior express written consent means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. (i) The written agreement shall include a clear and conspicuous disclosure informing the person signing that: (A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and (B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services. (ii) The term “signature” shall include an electronic or digital form of signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.”

21. Starting in or around August 2016, and no later than November 2016, Plaintiffs received pre-recorded telemarketing calls from Defendant, on Plaintiffs' cellular phones, regarding Defendant's sale of automobiles.

22. Beginning in August 2016 and/or November 2016, Plaintiffs received one or more pre-recorded call(s) on their respective cellular telephones made or caused to be made by Defendant or Defendant's agent, employee, and/or an individual acting on Defendant's behalf, which stated one or more of the following pre-recorded telemarketing calls issued by Defendant:

This is Lucy calling from Hendrick Chrysler Dodge Jeep Ram. We're having our kickoff the year savings event and the deals right now are bigger than they've been all year. We want to stay number one in Birmingham so we're discounting vehicles up to \$15,000. This sale won't last long, and I'd hate for you to miss out on these savings. Plus, we really need used cars, so we'll give you top dollar for your trade. Anyway, sorry I missed you. Again, this is Lucy with Hendrick Chrysler Dodge Jeep Ram, give me a call today to set up an appointment or schedule a test drive. You can reach me at 205-545-8086. Thanks and have a great day.

Hi This is Lucy calling from Hendrick Chrysler Dodge Jeep Ram. We are having our red hot clear the lot blow out used car event tomorrow through Sunday. We're making deals to help us stay number one in Birmingham and I'm reaching out to our valued customers so you don't miss out on these specials. We have the biggest selection in Birmingham and prices starting under \$5,000. But come early because the best vehicles won't last long. We're also giving top dollar for your trade during this event. Anyway sorry I missed you. Again this is Lucy with Hendrick Chrysler Dodge Jeep Ram. Give me a call today to set up an appointment or schedule a test drive. You can reach me at 205545 8086. Thanks and have a great day.

Hey, I hope you're having a great day. This is Joel Smith, General Manager at Hendrick Chrysler Dodge Jeep and Ram. We're still looking for some great pre-owned vehicles for our lot. So I just wanted to see if you would be

willing to let me make you an aggressive offer for your vehicle. I also thought I would personally invite you in a week early for big Black Friday Event. Last year we were absolutely slammed. So I want to give you a chance to get all the same deals before Black Friday actually gets here. I think we can really save you a lot of money and help you upgrade if you're interested. Even keep the same payment and move up a model year. You can give me and my team a call here at 205-732-9288 if you're interested. Looking forward to hearing from you real soon.

Hi, this is Joel Smith, General Manager of Hendrick Chrysler Dodge Jeep & Ram. I'm real sorry I missed you, but I just wanted to just pass along some information. You may have heard of our recent hail damage in April. For the last two months we've had records sales with the extra money they gave us to move those units. We now have some extra insurance money they gave us, just for loss of business and different things, and we are able to not only pass along even more savings than we were able to before on hail damaged vehicles but also vehicles that were not damaged at all. I would love for you to be able to take advantage of this. See the great deals we are able to give that other dealers just can't do because of this extra money. It's a really big deal. We are excited to be able to pass it along to the customers. Would love to talk to you more about it. Give us a call at 205-202-8221.

23. Plaintiffs have received one or more Robocalls from the Defendant without their respective written consent and/or the Robocall did not contain the opt-out mechanism required by the TCPA and/or its rules, regulations, or declaratory rulings.

24. Plaintiff(s) has never given Defendant express, written consent to contact Plaintiff(s) via prerecorded telemarketing calls and did not consent to received telemarketing calls that did not contain an opt out mechanism that would allow Plaintiff(s) to opt out of and avoid future calls.



25. Defendant's telemarketing call(s) did not provide the opt-out mechanism required by rule, regulation, statute, or declaratory ruling related to prerecorded telemarketing calls and advertisements.

26. Defendant was, and is aware, that they are placing unsolicited Robocalls to Plaintiff(s) and other consumers without their prior written consent.

27. Defendant was, and is aware, that they are placing Robocalls and/or prerecorded telemarketing calls without including an opt-out mechanism.

28. Defendant tried to adhere to the prohibition to not make Robocalls or pre-recorded calls to telephone numbers registered or listed on the Do Not Call registry, or other applicable list.

#### **V. CLASS ALLEGATIONS**

29. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3) on behalf of themselves and a Class of similarly situated individuals, defined as follows:

**Robocall Class**: All persons in the United States who (1) received a telephone call; (2) promoting Defendant's services and goods; (3) that featured an artificial or pre-recorded voice; and (4) for which the caller had no record of prior written express consent to make such call to the telephone number that received it or (5) for which the call did not include an opt out mechanism.

**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; (2) who never consented to be contacted by Defendant; (3) to which Defendant made more than one telephone call to; (4)

promoting Defendant's products or services; (5) within any 12-month period.

30. Excluded from the Class are (1) Defendant, Defendant's agents, subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest, and those entity's current and former employees, officers, and directors, (2) the Judge to whom this case is assigned and the Judge's immediate family, (3) persons who execute and file a timely request for exclusion from the Class, (4) persons who have had their claims in this matter finally adjudicated and/or otherwise released, and (5) the legal representatives, successors, and assigns of any such excluded person.

31. The exact number of members of the Class is unknown and is not available to Plaintiffs at this time, but individual joinder in this case is impracticable. The Class likely consists of thousands of individuals. Class members can be easily identified through Defendant's records.

32. There are many questions of law and fact common to the claims of Plaintiffs and the other members of the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not limited to, the following:

- a. Whether Defendant's conduct violated the TCPA;
- b. Whether Defendant made calls featuring an artificial or pre-recorded voice;

- c. Whether Defendant and/or its agents systematically made phone calls to persons who did not previously provide Defendant and/or its agents with their prior express consent to receive such phone calls;
- d. Whether Defendant failed to provide an opt-out mechanism required by law, rule, or regulation; and
- e. Whether Class members are entitled to treble damages based on the willfulness of Defendant's conduct.
- f. Whether Defendant failed to ensure advertising calls were not made to telephone numbers on the Do Not call registry.

33. Plaintiffs' claims are typical of the claims of the other members of the Class. Plaintiffs and the Class sustained damages as a result of Defendant's uniform wrongful conduct during transactions with Plaintiffs and the Class.

34. Plaintiffs will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex litigation and class actions. Plaintiffs have no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs. Plaintiffs and counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiffs nor counsel has any interest adverse to those of the other members of the Class.

35. This class action is appropriate for certification because Defendant has acted, or refused to act, on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's policies challenged herein apply and affect members of the Class uniformly and Plaintiffs' challenge of these policies hinges on Defendant's conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiffs. Defendant has acted and failed to act on grounds generally applicable to Plaintiffs and the other members of the Class, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward members of the Class. The factual and legal bases of Defendant's liability to Plaintiffs and to the other members of the Class are the same, resulting in injury to the Plaintiffs and to all of the other members of the Class. Plaintiffs and the members of the Class have suffered harm and damages as a result of Defendant's unlawful and wrongful conduct.

36. This case is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy. The injuries suffered by the individual members of the Class are likely to have been relatively small compared to the burden and expense of

individual prosecution of the litigation necessitated by Defendant's actions. Absent a class action, it would be difficult, if not impossible, for the individual members of the Class to obtain effective relief from Defendant. Even if members of the Class themselves could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties and the Court, and require duplicative consideration of the legal and factual issues presented herein. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single Court. Economies of time, effort, and expense will be fostered, and uniformity of decisions will be ensured.

37. Plaintiffs reserve the right to revise the foregoing "Class Allegations" and "Class Definition" based on facts learned through additional investigation and in discovery.

**FIRST CAUSE OF ACTION  
VIOLATION OF 47 U.S.C § 227  
(On behalf of Plaintiff(s) and the Robocall Class)**

39. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

40. Defendant made unsolicited and unwanted telemarketing calls to the cellular number belonging to Plaintiffs and the other members of the Robocall

Class without their prior written express consent and such unwanted telemarketing calls did not include an opt out mechanism as required by applicable law, rule, or regulation.

41. Defendant made unsolicited telemarketing calls to the telephone numbers belonging to Plaintiffs and the other members of the Robocall Class using a prerecorded or artificial voice, more commonly known as a “Robocall” and/or made calls to Plaintiffs and the other members of the Robocall Class that did not include an opt out mechanism.

42. By making, or having made on its behalf, unsolicited Robocalls utilizing an artificial or pre-recorded voice to Plaintiffs’ and the Class’s telephones without their prior written express consent, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 U.S.C. § 227(b)(1)(B). As a result of Defendant’s unlawful conduct, Plaintiffs and the other members of the Robocall Class suffered actual damages in the form of monies paid to receive unsolicited calls and, under Section 227(b)(3)(B), are each entitled to, inter alia, a minimum of \$500 in statutory damages for each violation of the TCPA.

43. Should the Court determine that Defendant’s misconduct was willful and knowing, the Court may, pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the other members of the Robocall Class.

**SECOND CAUSE OF ACTION**  
**Violation of the TCPA, 47 U.S.C. § 227(c)(5)**  
**(On behalf of the Plaintiff and the Do Not Call Class)**

44. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

45. 47 U.S.C. §227 (c) provides that any person "who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" bring a private action based on a violation of said regulations, which regulations were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object.

46. 47 C.F.R. §64.1200 (c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "... (2) A residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

47. 47 C.F.R. §64.1200 (d) further provides that "No person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by, or on behalf

of, that person or entity. The procedures instituted must meet the following minimum standards:

- g. Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.
- h. Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
- i. Recording disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or 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.
- j. Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or 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.
- k. Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included, given the identification of the caller and the product being advertised.



1. Maintenance of do-not-call lists. A person or entity making calls 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.

48. 47 C.F.R. §64.1200 (e), provides that §64.1200 (c) and (d) are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission's Report and Order, CO Docket No. 02-278, FCC 03- IS3, 'Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991', which Report and Order in turn, provides as follows:

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

49. Defendant violated 47 C.F.R. § 64.1200(c) by initiating telephone solicitations to wireless and residential telephone subscribers, such as Plaintiffs and the Do Not Call 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 not to receive calls from Defendant, as set forth in 47 C.F.R. §64.1200(d)(3).

50. Defendant and/or its agents made unsolicited telephone calls to Plaintiffs and the members of the Robocall Class without their prior express consent to receive such calls. Plaintiffs and members of the Robocalls Class never provided any form of consent, at any time, to receive telephone calls from Defendant.

51. Defendant violated 47 C.F.R. §64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the Do Not Call Class, without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls from them.

52. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiffs and the Do Not Call Class received more than one telephone call within a 12-month period made by, or on behalf of, the Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant's conduct as alleged herein, Plaintiffs, the Robocall Class, and the Do Not Call Class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled, inter alia, to receive up to \$500 in damages for such violations of § 64.1200.

52. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Do Not Call Class.

**THIRD CAUSE OF ACTION**  
**VICARIOUS LIABILITY FOR TCPA VIOLATIONS BY A THIRD PARTY**  
**TELEMARKETER**  
**(On behalf of Plaintiff and the Robocall Class)**

53. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

54. A third party telemarketing firm, or firms acting as agents for Defendant, made unsolicited Robocall telemarketing calls to the telephone numbers belonging to Plaintiff and the other members of the Robocall Class.

55. By making, or having made on its behalf by third party telemarketing firm or firms, unsolicited Robocalls without prior written express consent, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 U.S.C. § 227(b)(1)(B). As a result of Defendant's unlawful conduct, Plaintiffs and the other members of the Robocall Class suffered actual damages in the form of monies paid to receive unsolicited calls and, under Section 227(b)(3)(B), are each entitled to, inter alia, a minimum of \$500 in statutory damages for each violation of the TCPA.

56. Defendant is liable with regard to said Robocall violations as said third party telemarketers had (1) access to detailed information regarding the nature of Defendant's products; (2) the authority to contact Plaintiffs and putative class members using Defendant's trade names; (3) Defendant approved, ratified and/or reviewed said third party telemarketers scripts; and (4) Defendant knew or reasonably should have known that the telemarketer was violating the TCPA on

Defendant's behalf, and Defendant failed to take effective steps within its power to force the telemarketer to cease said conduct.

57. To the extent Defendant's misconduct is determined to be willful and knowing, the Court should, pursuant to § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Robocall Class.

**FOURTH CAUSE OF ACTION  
VICARIOUS LIABILITY WITH RESPECT TO DO-NOT-CALL  
VIOLATIONS  
(On behalf of Plaintiff and the Robocall Class)**

58. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

59. 47 C.F.R. § 64.1200(c), provides that "No person or entity shall initiate any telephone solicitation" to "... (2) A residential telephone subscriber who has registered his or her telephone number on the national Do Not Call Registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

60. Third party telemarketing firm or firms acting as agents for Defendant made unsolicited telemarketing calls to the cellular telephone number belonging to Plaintiffs, and the other members of the Do Not Call Class despite said Do Not Call registration.

61. Said calls were made by said Third Party telemarketing firm or firms or "on behalf" of Defendant as contemplated by 227(c)(5).

62. Defendant is liable with regard to said do-not-call violations as said third party telemarketers had (1) access to detailed information regarding the nature of Defendant's products; (2) said third party telemarketers had the authority to contact Plaintiffs and putative class members using Defendant's trade names; (3) Defendant approved, ratified and/or reviewed said third party telemarketers scripts; and (4) Defendant knew or reasonably should have known that the telemarketer was violating the TCPA on Defendant's behalf, and Defendant failed to take effective steps within its power to force the telemarketer to cease said conduct.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF §8-19C-7 of Alabama Code, 1975**  
**(On behalf of Plaintiff and the Robocall Class)**

63. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

64. §8-19C-1(5) of Alabama Code, 1975 provides that “[m]any citizens of this state are outraged over the proliferation of nuisance calls to their homes from telemarketers.

64. §8-19C-2 of Alabama Code, 1975 provides in relevant part:

- (a) No person or entity may make or cause to be made any telephone solicitation to the telephone line of any residential subscriber in this state who has given notice to the commission of his or her objection to receiving telephone solicitations.

65. §8-19C-7 of Alabama Code, 1975 provides:

A person who has received more than one telephone solicitation within a 12-month period by or on behalf of the same person or entity in violation of subsection (a) of Section 8-19C-2 or Section 8-19C-5 may bring an action to enjoin the violation; bring an action to recover for actual monetary loss from the knowing violation or to receive up to two thousand dollars (\$2,000) in damages for each knowing violation, whichever is greater; or bring both actions.

66. Defendant violated §8-19C-2, Alabama Code, 1975 by making, or causing to be made, telephone solicitations to wireless and residential telephone subscribers, such as Plaintiffs and the Do Not Call Class members who registered their respective telephone numbers on the National Do Not Call Registry.

67. As a result of said violation, Defendants are liable for up to two thousand dollars (\$2,000) in damages for each knowing violation.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Gary Smith and Plaintiff Pam Ganus, on behalf of themselves and the putative Class, respectfully request that this Court enter an order:

A. Certifying this case as a class action on behalf of the Classes defined above, appointing Plaintiff Gary Smith and Plaintiff Pam Ganus as representative of the Robocall classes, and appointing the undersigned legal counsel for Mr. Smith and Ms. Ganus as Class Counsel;

B. Awarding injunctive and other equitable relief as necessary to protect the interests of the Class, including, inter alia, an order prohibiting Defendant from engaging in the wrongful and unlawful acts described herein, and ensuring that the Defendant makes all efforts to adhere to all regulations, rules and declarative rulings by the FCC and FTC related to automated and prerequisite order calls;

C. An award of actual and statutory damages;

D. Awarding Plaintiff and the Robocall classes their reasonable litigation expenses and attorneys' fees;

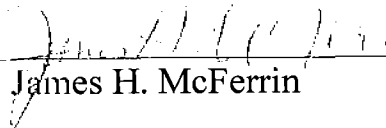
E. Awarding Plaintiff and the Class pre- and post-judgment interest, to the extent allowable; and

Awarding such other and further relief as equity and justice may require.

### **JURY TRIAL**

Plaintiff demands a trial by jury for all issues so triable.

Respectfully submitted, this the 29<sup>th</sup> day of January 2018

  
James H. McFerrin

**OFCOUNSEL:**  
**McFERRIN LAW FIRM, L.L.C.**  
**3117 Manitou Lane**  
**Birmingham, Al 35216**  
**(205) 637-7111**  
**jhmcFerrin@bellsouth.net**

**SERVE BY CERTIFIED MAIL:**

Hendrick Automotive Group  
c/o Hendrick Chrysler Dodge Jeep Ram Hoover  
c/o Joel Smith  
Executive General Manager  
1624 Montgomery Highway  
Birmingham, AL 35216

Hoover Chrysler-Plymouth, Inc.  
c/o Registered Agent The Corporation Company  
60 Commerce Street  
Montgomery, AL 36103  
**SERVE BY PERSONAL SERVICE:**

Hendrick Automotive Group  
c/o Hendrick Chrysler Dodge Jeep Ram Hoover  
c/o Joel Smith  
Executive General Manager  
1624 Montgomery Highway  
Birmingham, AL 35216



# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [The Hendrick Automotive Group Facing Robocall Class Action in Alabama \[UPDATE\]](#)

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