

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK W. DOBRONSKI,
an Individual,

Plaintiff,

v.

CASE NO: 2:25-cv-10169

Hon. Nancy G. Edmunds

ALEXIS FRANCIS DARAUJO,
an Individual; UNITED OF OMAHA
LIFE INSURANCE COMPANY,
a Nebraska corporation; and DOE
TELEMARKETER, an unknown
person,

Defendants.

**DEFENDANT UNITED OF OMAHA LIFE INSURANCE COMPANY'S
REPLY IN SUPPORT OF MOTION TO DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT UNDER FRCP 12(b)(1) AND 12(b)(6)**

Plaintiff's First Amended Complaint ("Complaint") is part of a serial pattern of complaints he has filed in this District over the last five years alleging violations of the TCPA and similar state statutes. As described in United of Omaha Life Insurance Company's ("United") Motion to Dismiss, Plaintiff's current Complaint is particularly vexatious because it only alleges one **uninvited** call (Call No. 1) where United was mentioned by an unknown telemarketer who Plaintiff refers to as "Doe Telemarketer," with the remainder of pleaded calls (Call Nos. 2-14) only occurring after Plaintiff feigned interest in the insurance products being sold under a false identity he provided to an individual named "Larry Edwards" who initially advised him that he was calling on behalf of "Allstate Insurance Company." ECF No. 20, PageID. 216-19. Therefore, Plaintiff's feigned interest established both implied consent and a business relationship, which prevents him from establishing TCPA or related state claims for the remaining calls, including the one call (Call No. 4) allegedly made by Defendant Daraujo, who Plaintiff alleges is an "authorized agent of [United]." ¶75. Moreover, the meritless nature of Plaintiff's Complaint is further demonstrated by the fact that Plaintiff is alleging that United is liable for calls (Call Nos. 6-9) that bear no conceivable relationship to United, as United was not even identified or mentioned on the calls. ECF No. 20, PageID. 223-26, ¶¶150-169.

Plaintiff's Complaint is nothing more than a poorly constructed attempt to manufacture liability against United based on the purported actions of: (i) an

unidentified telemarketer who initially identified himself as calling on behalf of another insurance company; and (ii) Defendant Daraujo, who only called Plaintiff one time after Plaintiff provided his implied consent and established a business relationship. For these reasons, which are set forth more fully below and in United's Motion to Dismiss, Plaintiff's claims against United should be dismissed.

A. Plaintiff's Claims Must be Dismissed Because he Does Not have Standing to Pursue Claims Against United

This District has already determined that Plaintiff provides his "implied consent" to calls when he engages in conduct that is designed to encourage further calls. *See Dobronski v. Total Ins. Brokers, LLC*, No. 21-10035, 2021 WL 4452218, at *4 (E.D. Mich. Sept, 29, 2021) (concluding that the plaintiff (Dobronski) gave "implied consent" to calls when he "engaged in conduct [that was] designed to encourage" additional calls); *Dobronski v. Family First Life, LLC*, Case No. 22-cv-12039, 2024 WL 1342668, *4 (E.D. Mich. March 29, 2024) (upholding the dismissal of several of Dobronski's pleaded calls based on the magistrate judge's finding that "Dobronski did not have standing to bring claims arising out of the remaining calls in the amended complaint ...Because these calls were 'follow-ups resulting from Dobronski's feigned interest in the insurance products being sold,' they were not unsolicited, and Dobronski could not demonstrate that they had caused him injury."). Therefore, Plaintiff has not adequately pled the required "injury in fact" to establish standing, because in Call No. 1 Plaintiff feigned interest in the subject products,

thereby providing his implied consent to the remainder of alleged calls.

Moreover, Plaintiff ignores another exception, which also requires dismissal of his Complaint. Under the TCPA, the term “telephone solicitation” means:

[T]he initiation of a telephone call or message for the purpose of encouraging the purchase or rental, or investment in, property, goods, or services, which is transmitted to any person, but such term does not include a call or message: ... (ii) **To any person with whom the caller has an established business relationship ...**

47 C.F.R. § 64.1200(f)(15)(ii); 47 U.S.C. § 227(a)(4). The term established business relationship means:

[A] prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without consideration, ... on the basis of the subscriber’s inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

47 C.F.R. § 64.1200(f)(5). Here, Plaintiff’s own Complaint establishes that a business relationship was formed because he feigned interest in the products in Call No. 1 and Call Nos. 2-6 all occurred within three months after such feigned interest. Courts have found that an established business relationship under the same or similar circumstances at issue here. *See Charvat v. Southard Corp.*, No. 2:18-CV-190, 2019 WL 13128407, at *4 (S.D. Ohio Sept. 30, 2019); *Hamilton v. Spurling*, No. 3:11-CV-00102, 2013 WL 1164336, at *10 (S.D. Ohio Mar. 20, 2013) *Morris v. Copart*, No. 4:15-CV-724, 2016 WL 6608874, at *9 (E.D. Tex. Nov. 9, 2016). Thus,

Plaintiff has failed to establish statutory standing regarding: (i) Call Nos. 2-6, because in Call No. 1, the caller was given reason to believe that Plaintiff or his alter ego was interested in purchasing insurance products; (ii) Call Nos. 7-9, because they bear no conceivable relationship to United, as United was not referenced or mentioned in any way; and (ii) Calls No. 10-14, because in Call No. 10, Plaintiff once against feigned interest in the insurance product being sold reaffirming the business relationship for the remainder of calls.

Hence, consistent with the above precedent, Plaintiff has: (i) suffered no injury in fact under Article III; and (ii) not demonstrated more than one call in violation of the statute, which requires that the person receive more than one telephone call in violation of the statute within any 12-month period on behalf of the same entity in order to have a private cause of action. *See* 47 U.S.C. § 227(c)(5).

B. Plaintiff Does Not Adequately Plead that United is Vicariously Liable

Plaintiff argues that that United is vicariously liable for the calls made by an unknown and identified telemarketer and the one call allegedly made by Daurajo, who he claims is United's "authorized agent." Specifically, Plaintiff argues that: (i) the Complaint pleads a concert of action between United, Daraujo and Doe Telemarketer (ECF No. 27, PageID 331); (2) Daraujo is an "authorized agent of United" as set forth in Florida public records (ECF No. 27, PageID 334); and (3) the Complaint pleads that United facilitates the concern of actions by providing Daraujo

and Doe Telemarketer with use of United's trademark and access to its computer systems for product and pricing information and direct input to application forms, which he attempts to support by attaching emails to his Response from Defendant Daraujo and United to his false name regarding the application. *Id.*

Despite Plaintiff's impermissible attempts to rely upon information not included in the Complaint, such exhibits do nothing to cure the critical deficiencies in Plaintiff's vicarious liability allegations against United. Plaintiff pleads no facts plausibly establishing that United controls either Co-Defendant or the contents of their alleged calls to Plaintiff. On the contrary, Plaintiff cannot identify who Doe Telemarketer is, much less any relationship with United. The Complaint does not include any allegations that United approved, wrote or reviewed Doe Telemarketer's telemarketing scripts. The Complaint does not include any allegations that either Co-Defendant has the power to alter the legal relationship between United and the third parties. The Complaint does not contain any allegations that either Co-Defendant is a fiduciary of United. And the Complaint does not allege that United has the right to control the alleged agents' conduct on matters entrusted to them.

Without these allegations, Plaintiff utterly fails to plead the necessary agency relationship with either Co-Defendant to sustain a claim for vicarious liability against United. *See Gen. Ret. Sys. of Detroit*, 14-cv-10032, 2015 WL 7756153, at *2 (E.D. Mich. Dec. 2, 2015) (explaining that, to establish an agency relationship, a

party must show “(1) the agent has the power to alter the legal relations between the principal and third parties; (2) the agent is a fiduciary of the principal regarding the matters within the scope of the agency; and (3) the principal has the right to control the agent’s conduct of matters entrusted to him.”).

Moreover, Plaintiff’s attempt to rely upon *Dobronski v. Family First Life, LLC*, 2024 WL 1342668 to support the proposition that he has adequately pled an agency relationship in this case is misplaced, as that case involved a specifically identified telemarketer, Family First Life, with whom United had a relationship and whom was allegedly involved in dozens of calls allegedly violating the TCPA and related state statutes. *Id.* at *10. Plaintiff’s Response also conveniently ignores this Court’s ruling in *Dobronski v. Kelly, et al.*, 2:23-CV-10257, ECF No. 23, PageID 16-20 (E.D Mich. Dec. 8, 2023), where the Court dismissed Plaintiff’s Complaint making the same type of allegations he is making here, because Plaintiff failed to plead sufficient facts that the co-defendants had United’s actual or apparent authority to make the telemarketing calls in question. *Id.* at PageID 186 (finding that “no facts [suggest] that United accepted the applications with knowledge that they were obtained through unlawful conduct.”).¹

C. Plaintiff Fails to State a Claim for Willfulness to Warrant Treble

¹ Plaintiff’s claims under the Michigan Home Solicitation Sales Act, Michigan Telephone Companies as Common Carriers Act, Michigan Consumer Protection Act, and Florida Telemarketing Sales Act must be dismissed for the same reason – Plaintiff has failed to sufficiently plead United’s vicarious liability.

Damages

In *Dobronski v. Total Ins. Brokers, LLC*, 2021 WL 4452218, at *4, this Court held that Plaintiff’s technique of “encouraging call[s]” precluded him from treble damages because the additional calls were not “willful”. *Id.* (“Because Plaintiff concedes that he engaged in conduct designed to encourage the second call, he gave implied consent to that call. Accordingly, Plaintiff fails to state a claim that the second call was a “willful.”). Here, Plaintiff not only fails to plead any uninvited calls from United, but he also fails to plead that United did so willfully. In general, this Court denies claims for willfulness when plaintiffs do not notify defendants that they wish not to be called. *See Duchene v. OnStar, LLC*, No. 15-cv-13337, 2016 WL 3997031, at *7 (E.D. Mich. July 26, 2016). A willfulness claim requires “something more” than a mere TCPA violation. *See Bristow v. Am. Nat’l Ins. Co.*, No. 2:20-cv- 10752, 2021 U.S. Dist. LEXIS 102406, *6-7 (E.D. Mich. June 1, 2021).

For the foregoing reasons and those stated in United’s Motion to Dismiss, United respectfully requests that this Court dismiss Plaintiff’s claims against United.

Respectfully submitted,

/s/ D. Peter Valiotis

D. Peter Valiotis (P68499)
500 Woodward Avenue, Suite 3500
Detroit, MI 48226
(313) 965-8300
pvaliotis@clarkhill.com
Attorneys for Defendant United

June 20, 2025

CERTIFICATE OF SERVICE

I state that on June 20, 2025, the foregoing paper was filed with the Court via the ECF system which will send notification to all attorneys of record and via U.S.

Mail to

Mark W. Dobronski
PO Box 99
Dexter, MI 48130-0099

Alexis D'Araujo
462 Pent Street
Tarpon Springs, FL 34689-4028

With sufficient postage thereon.

/s/ D. Peter Valiotis
D. Peter Valiotis (P68499)
500 Woodward Avenue, Suite 3500
Detroit, MI 48226
(313) 965-8300
pvaliotis@clarkhill.com
Attorneys for Defendant United of Omaha
Life Insurance Company