

Stack 1

Group 1

Set 1

- MMP current lawsuit for grand sales practices.

- telephone / sms marketing without permission

- Bret had us solicit to emails without client permission.

- one email goes on multiple lists.

- Arrington set up Mega follow up campaigns for MMP during this time of employment.

- Indictment was way to silence arrington.

Carfagno v. Money Map Press, LLC (8:19-cv-00728)

District Court, M.D. Florida

 View on PACER (<https://ecf.flmd.uscourts.gov/cgi-bin/DktRpt.pl?361771>)

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 (</help/alerts/#recap-alerts>)

Last Updated: Sept. 12, 2019, 3:59 p.m. EDT

Date Filed: March 26, 2019

Cause: Restrictions on Use of Telephone Equipment ([/?type=r&cause="Restrictions on Use of Telephone Equipment"](/?type=r&cause=Restrictions%20on%20Use%20of%20Telephone%20Equipment))

Nature of Suit: 890 Other Statutory Actions ([/?type=r&nature_of_suit="890 Other Statutory Actions"](/?type=r&nature_of_suit=890%20Other%20Statutory%20Actions))

Jury Demand: Plaintiff ([/?type=r&q=juryDemand:"Plaintiff"](/?type=r&q=juryDemand:Plaintiff))

Jurisdiction Type: Federal Question

 Docket Entries (</docket/14796949/carfagno-v-money-map-press-llc/>)

 Parties and Attorneys (</docket/14796949/parties/carfagno-v-money-map-press-llc/>)

Filed

YYYY-MM-DD

to

YYYY-MM-DD

Documents

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↓₁

to

	Date Filed	Description
1	Mar 26, 2019	COMPLAINT against Money Map Press, LLC with Jury Demand (Filing fee \$ 400 receipt number 113A-15278956) filed by Terri Carfagno. (Attachments: # 1 Civil Cover Sheet, # 2 Proposed Summons)(Eisenband, Michael) (Entered: 03/26/2019)

		Main Doc	Complaint (/docket/14796949/1/carfagno-v-money-map-press-llc/)
		Att 1	Civil Cover Sheet
		Att 2	Proposed Summons
	Mar 26, 2019		Case Assigned/Reassigned
2	Mar 26, 2019		NEW CASE ASSIGNED to Judge William F. Jung and Magistrate Judge Christopher P. Tuite. New case number: 8:19-cv-728-T-02CPT. (SJB) (Entered: 03/26/2019)
		Main Doc	
3	Mar 27, 2019		RELATED CASE ORDER AND NOTICE of designation under Local Rule 3.05 - track 2. Counsel and any unrepresented party shall meet within sixty days after service of the complaint upon any defendant for the purpose of preparing and filing a Case Management Report. Signed by Judge William F. Jung on 3/27/2019. (SAO) (Entered: 03/27/2019)
		Main Doc	Related case order and track 2 notice
4	Mar 27, 2019		NOTICE of Appearance by Manuel Santiago Hiraldo on behalf of Terri Carfagno (Hiraldo, Manuel) (Entered: 03/27/2019)
		Main Doc	Notice of appearance
5	Mar 27, 2019		NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Terri Carfagno. Related case(s): no (Eisenband, Michael) (Entered: 03/27/2019)
		Main Doc	Notice of pendency of related cases
6	Mar 27, 2019		CERTIFICATE of interested persons and corporate disclosure statement re 3 Related case order and track 2 notice by Terri Carfagno. (Eisenband, Michael) (Entered: 03/27/2019)
		Main Doc	Certificate of interested persons and corporate disclosure statement
7	Mar 27, 2019		SUMMONS issued as to Money Map Press, LLC. (BES) (Entered: 03/27/2019)
		Main Doc	Summons issued
8	Apr 1, 2019		RETURN of service executed on 4/1/2019 by Terri Carfagno as to Money Map Press, LLC. (Eisenband, Michael) (Entered: 04/01/2019)
		Main Doc	Summons returned executed
9	Apr 11, 2019		NOTICE of pendency of related cases re 3 Related case order and track 2 notice per Local Rule 1.04(d) by Money Map Press, LLC. Related case(s): No (Randles, Theodore) (Entered: 04/11/2019)
		Main Doc	Notice of pendency of related cases

10	Apr 11, 2019	CERTIFICATE of interested persons and corporate disclosure statement re 3 Related case order and track 2 notice by Money Map Press, LLC identifying Corporate Parent Monument & Cathedral Holdings, Inc., Other Affiliate National Institute for Cannabis Investors, LLC, Other Affiliate American Institute of Trading Mastery, LLC for Money Map Press, LLC.. (Randles, Theodore) (Entered: 04/11/2019) Main Doc Certificate of interested persons and corporate disclosure statement
11	Apr 11, 2019	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint by Money Map Press, LLC. (Randles, Theodore) Motions referred to Magistrate Judge Christopher P. Tuite. (Entered: 04/11/2019) Main Doc Extension of Time to File Answer
12	Apr 12, 2019	ENDORSED ORDER granting 11 Defendant's Unopposed Motion for Extension of Time to Answer Complaint. Defendant Money Map Press, LLC's answer or response is due on or before 5/6/2019. Signed by Magistrate Judge Christopher P. Tuite on 4/12/2019. (AHA) (Entered: 04/12/2019) Main Doc
	Apr 12, 2019	Order on motion for extension of time to answer
13	Apr 30, 2019	MOTION for Ari N. Rothman to appear pro hac vice by Money Map Press, LLC. (Scriven, Lansing) Motions referred to Magistrate Judge Christopher P. Tuite. (Entered: 04/30/2019) Main Doc Appear pro hac vice
	May 1, 2019	***PRO HAC VICE FEES paid by attorney Ari N. Rothman, appearing on behalf of Money Map Press, LLC (Filing fee \$150 receipt number TPA056376.) Related document: 13 MOTION for Ari N. Rothman to appear pro hac vice. (ARC)
	May 1, 2019	Pro Hac Vice Fees paid
	May 1, 2019	Order on motion to appear pro hac vice
14	May 1, 2019	ENDORSED ORDER granting 13 Ari N. Rothman's Motion to Appear Pro Hac Vice. Signed by Magistrate Judge Christopher P. Tuite on 5/1/2019. (AHA) (Entered: 05/01/2019) Main Doc
15	May 6, 2019	ANSWER and affirmative defenses to 1 Complaint by Money Map Press, LLC.(Scriven, Lansing) (Entered: 05/06/2019) Main Doc Answer to Complaint
16	May 28, 2019	CASE MANAGEMENT REPORT. (Hirald, Manuel) (Entered: 05/28/2019) Main Doc Case Management Report
17	Jun 10, 2019	CASE MANAGEMENT AND SCHEDULING ORDER: Dispositive motions due by 10/05/2020, Final Pretrial Conference set for 3/11/2021 at 9:00 AM in Tampa Courtroom 15B before Judge William F. Jung, Jury Trial set for the April 2021 trial term commencing 4/05/2021 at 9:00 AM in Tampa Courtroom 15B before Judge William F. Jung. Conduct mediation hearing

by 1/15/2021. Lead counsel to coordinate dates. Deadline for Plaintiff to File Motion for Class Certification 01/30/2020. Signed by Judge William F. Jung on 6/10/2019. (SAO) (Entered: 06/10/2019)

		Main Doc	Case management and scheduling order
18	Jul 12, 2019	Main Doc	Protective order
	Jul 12, 2019		Order on Motion for Protective Order
20	Aug 9, 2019	Main Doc	Appear pro hac vice
	Aug 12, 2019		Pro Hac Vice Fees paid
	Aug 12, 2019		Order on motion to appear pro hac vice
22	Aug 16, 2019	Main Doc	Amend/Correct
	Aug 20, 2019		*Order pdf
	Aug 20, 2019		*Order no pdf
24	Aug 22, 2019	Main Doc	Response to motion
26	Aug 23, 2019	Main Doc	Amended Complaint
	Aug 23, 2019		Order on Motion to Amend/Correct
27	Aug 30, 2019	Main Doc	Protective order
	Sep 3, 2019		Order on Motion for Protective Order
29	Sep 6, 2019	Main Doc	Dismiss/lack of jurisdiction
30	Sep 9, 2019	Main Doc	Leave to File Document
33	Sep 9, 2019	Main Doc	Amended Complaint
	Sep 9, 2019		Order on Motion for Leave to File
	Sep 9, 2019		Order on motion to dismiss/lack of jurisdiction
34	Sep 10, 2019	Main Doc	Compel
35	Sep 11, 2019	Main Doc	Response to motion
36	Sep 12, 2019	Main Doc	Notice of appearance

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

TERRI CARFAGNO,
individually and on behalf of all
others similarly situated,

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

MONEY MAP PRESS, LLC,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Terri Carfagno brings this class action against Defendant Money Map Press, LLC (“Defendant”) and alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

NATURE OF THE ACTION

1. This is a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”), arising from Defendant’s knowing and willful violations of the TCPA.
2. Defendant claims to give their customers “access to a team of investment experts – with more than 250 years of combined experience – who work to uncover these global trends well before the mainstream media even takes notice.”¹
3. Defendant sells literary subscriptions to consumers which include self-help financial courses and documents.

¹ <https://moneymappress.com/visitors/about/>

4. Defendant engages in unsolicited telemarketing directed towards prospective customers with no regard for consumers' privacy rights.

5. Defendant's telemarketing consists of sending text messages to consumers soliciting them to purchase its goods and/or services.

6. Defendant caused thousands of unsolicited text messages to be sent to the cellular telephones of Plaintiff and Class Members, causing them injuries, including invasion of their privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.

7. Through this action, Plaintiff seeks injunctive relief to halt Defendant's illegal conduct. Plaintiff also seeks statutory damages on behalf of herself and Class Members, as defined below, and any other available legal or equitable remedies resulting from the illegal actions of Defendant.

JURISDICTION AND VENUE

8. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a national class, which will result in at least one Class member belonging to a different state than Defendant. Plaintiff seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class numbering in the tens of thousands, or more, exceeds the \$5,000,000.00 threshold for federal court jurisdiction under the Class Action Fairness Act ("CAFA").

9. Venue is proper in the United States District Court for the Middle District of Florida pursuant to 28 U.S.C. §§ 1391(b) and (c) because Defendant is deemed to reside in any judicial district in which it is subject to the court's personal jurisdiction, and because Defendant provides and markets its services within this district thereby establishing sufficient contacts to subject it to personal jurisdiction. Further, Defendant's tortious conduct against Plaintiff occurred within this district and, on information and belief, Defendant has sent the same text message complained of by Plaintiff to other

individuals within this judicial district, such that some of Defendant's acts have occurred within this district, subjecting Defendant to jurisdiction here.

PARTIES

10. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Sarasota County, Florida.

11. Defendant is a Maryland corporation with its principal address at 105 W Monument St., Baltimore, MD 21201. Defendant directs, markets, and provides business activities throughout the State of Florida.

THE TCPA

12. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient's prior express consent. 47 U.S.C. § 227(b)(1)(A).

13. The TCPA defines an "automatic telephone dialing system" ("ATDS") as "equipment that has the capacity - (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." 47 U.S.C. § 227(a)(1).

14. The TCPA exists to prevent communications like the ones described within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

15. In an action under the TCPA, a plaintiff must show only that the defendant "called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice." *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff'd*, 755 F.3d 1265 (11th Cir. 2014).

16. The Federal Communications Commission ("FCC") is empowered to issue rules and regulations implementing the TCPA. According to the FCC's findings, calls in violation of the TCPA

are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.

17. In 2012, the FCC issued an order further restricting automated telemarketing calls, requiring “prior express written consent” for such calls to wireless numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

18. To obtain express written consent for telemarketing calls, a defendant must establish that it secured the plaintiff’s signature in a form that gives the plaintiff a “‘clear and conspicuous disclosure’ of the consequences of providing the requested consent. . . . and [the plaintiff] having received this information, agrees unambiguously to receive such calls at a telephone number the [plaintiff] designates.” *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

19. The TCPA regulations promulgated by the FCC define “telemarketing” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. § 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

20. “Neither the TCPA nor its implementing regulations ‘require an explicit mention of a good, product, or service’ where the implication of an improper purpose is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918 (9th Cir. 2012)).

21. “‘Telemarketing’ occurs when the context of a call indicates that it was initiated and

transmitted to a person for the purpose of promoting property, goods, or services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii) & 47 C.F.R. § 64.1200(f)(12)); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).

22. The FCC has explained that calls motivated in part by the intent to sell property, goods, or services are considered telemarketing under the TCPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003). This is true whether call recipients are encouraged to purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

23. In other words, offers “that are part of an overall marketing campaign to sell property, goods, or services constitute” telemarketing under the TCPA. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

24. If a call is not deemed telemarketing, a defendant must nevertheless demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising calls”).

25. Further, the FCC has issued rulings and clarified that consumers are entitled to the same consent-based protections for text messages as they are for calls to wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) (“The FCC has determined that a text message falls within the meaning of ‘to make any call’ in 47 U.S.C. § 227(b)(1)(A)”).

26. With respect to standing, as recently held by the United States Court of Appeals for the Ninth Circuit:

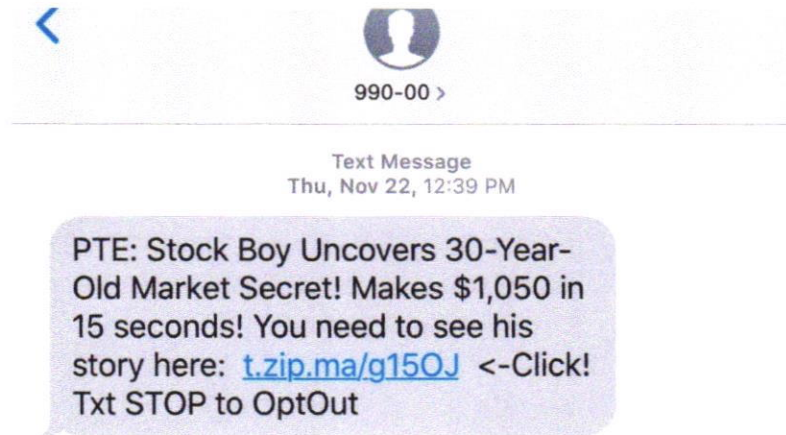
Unsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA “need not allege any *additional* harm beyond the one Congress has identified.”

Van Patten v. Vertical Fitness Grp., LLC, 847 F.3d 1037 (9th Cir. 2017) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)).

27. Similarly, the United States Court of Appeals for the Second Circuit recently held that the receipt of a telemarketing or unsolicited call “demonstrates more than a bare violation and satisfies the concrete-injury requirement for standing.” *Leyse v. Lifetime Entm't Servs., LLC*, Nos. 16-1133-cv, 16-1425-cv, 2017 U.S. App. LEXIS 2607 (2d Cir. Feb. 15, 2017) (citing *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 725 F.3d 65, 105 (2d Cir. 2013) (“The injury-in-fact necessary for standing need not be large; an identifiable trifle will suffice.”); *Golan v. Veritas Entm't, LLC*, 788 F.3d 814, 819-21 (8th Cir. 2015) (holding that receipt of two brief unsolicited robocalls as voicemail messages was sufficient to establish standing under TCPA); *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1252 (11th Cir. 2015) (holding that injury under similar TCPA provision may be shown by one-minute occupation of fax machine)).

FACTS

28. On or about November 22, 2018, Defendant caused the following automated text message to be transmitted to Plaintiff’s cellular telephone number ending in 0087 (“0087 Number”):



29. Defendant's text message constitutes telemarketing/advertising because it promotes Defendant's business, goods and services.

30. Specifically, Defendant attempts to sell Plaintiff a subscription and/or package to its financial courses.

31. Defendant makes a profit on every package and/or subscription that is purchased through its website.

32. The text message includes a link which leads to the following webpage (the "Website") where Defendant's goods and services are marketed:

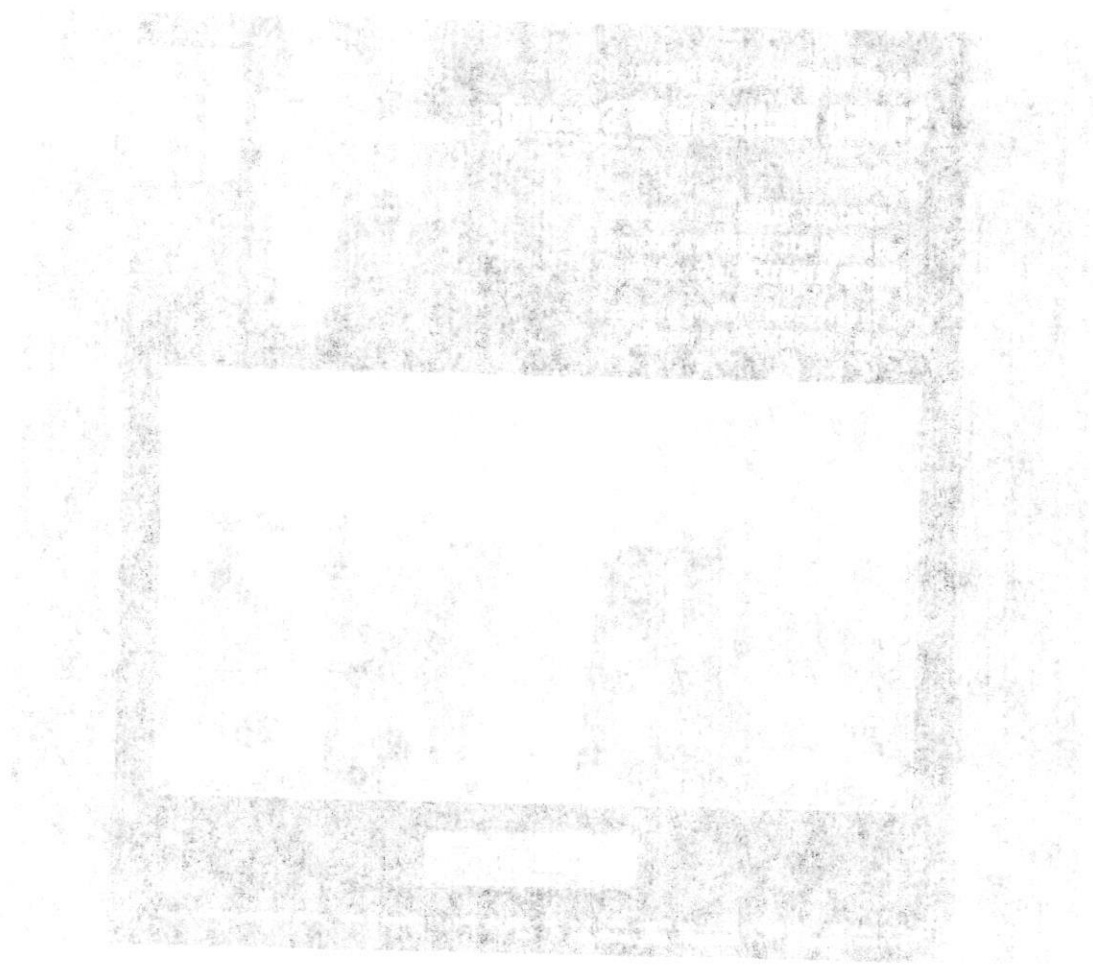
The screenshot shows a web browser window with the URL <https://pro.moneymappressinfo.com/p/TGTLNC39/LTGTU926/?SID=tclick&h=true>. The main content area has a dark background. At the top, it says "Watch America's #1 Trader Become" followed by "\$1,050 Richer in 15 Seconds" in large yellow text. Below this, it says "And then:" followed by a bulleted list:

- \$940 RICHER in 11 seconds...
- \$1,260 RICHER in 8 seconds...
- \$988 RICHER in 7 seconds...

 Below the list, it says "You've never seen anything like this... and you will NEVER see it again." To the right of the text is a small video player showing a man in a suit. Below the text and video player is a large green button that says "JOIN NOW". At the bottom of the page, there is a small copyright notice: "Copyright © 2019 Money Map Press. All Rights Reserved. Terms of Service. Privacy Policy. Disclaimer. Contact Us." and a small number "2" in the bottom right corner.

33. Upon clicking the "Join Now" button, the viewer is provided the following package and/or subscription packages for purchase:

² <https://pro.moneymappressinfo.com/p/TGTLNC39/LTGTU926/?SID=tclick&h=true>



2025 RELEASE UNDER E.O. 14176

2025 RELEASE UNDER E.O. 14176

☒ **Platinum Package: BEST DEAL**



FAST FORTUNE CLUB

- Upgraded Two-Year Membership to *Fast Fortune Club* (\$1,198 value)
- Bonus Report #1: *The Three Simple Steps to Making Your First Million* (\$149 value)
- Bonus Report #2: *How to Double Your Money on the World's Most Valuable Companies* (\$149 value)
- Bonus Report #3: *Four Simple Rules That Will Turn You Into A Trading Genius* (\$149 value)
- A 60-day, 100% Refund Guarantee!

TOTAL VALUE: \$1,645
Yours for Only \$79!

☐ **Base Package: GREAT DEAL**



FAST FORTUNE CLUB

- One-Year Membership to *Fast Fortune Club* (\$599 value)
- A 60-day, 100% Refund Guarantee!

TOTAL VALUE: \$599
Yours for Only \$39!

When you purchase a two-year subscription to *Fast Fortune Club*, you'll receive all the benefits listed above including a 60-day, 100% money-back guarantee. On your two-year anniversary, you will automatically be charged \$99 for an additional year. And you will lock in that low yearly rate

3

34. Plaintiff received the subject text message within this judicial district and, therefore,

Defendant's violation of the TCPA occurred within this district.

35. Upon information and belief, Defendant caused similar text messages to be sent to individuals residing within this judicial district.

36. Upon information and belief, Defendant owns and or operates the Website.

37. At no point in time did Plaintiff provide Defendant with her express consent to be contacted by text messages using an ATDS.

38. Plaintiff is the sole user of the 0087 Number.

39. The number used by or on behalf of Defendant (990-00) is known as a "short code," a standard 5-digit code that enables Defendant to send SMS text messages *en masse*.

40. The impersonal and generic nature of Defendant's text message, demonstrates that Defendant utilized an ATDS in transmitting the messages.

41. To send the text messages, Defendant used a messaging platform (the "Platform") that permitted Defendant to transmit thousands of automated text messages without any human involvement.

42. The Platform has the capacity to store telephone numbers, which capacity was in fact utilized by Defendant.

43. The Platform has the capacity to generate sequential numbers, which capacity was in fact utilized by Defendant.

44. The Platform has the capacity to dial numbers in sequential order, which capacity was in fact utilized by Defendant.

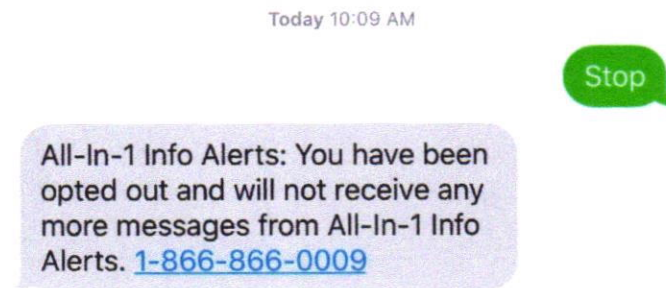
45. The Platform has the capacity to dial numbers from a list of numbers, which capacity

was in fact utilized by Defendant.

46. The Platform has the capacity to dial numbers without human intervention, which capacity was in fact utilized by Defendant.

47. The Platform has the capacity to schedule the time and date for future transmission of text messages, which occurs without any human involvement.

48. Additionally, the Platform has an auto-reply function that results in the transmission of text messages to individual's cellular telephones automatically from the system, and with no human intervention, in response to a keyword (e.g. "STOP") being sent by a consumer, which function was also utilized by Defendant on January 23, 2019. As shown below:



49. To transmit the messages at issue, the Platform automatically executed the following steps:

- (1) The Platform retrieved each telephone number from a list of numbers in the sequential order the numbers were listed;
- (2) The Platform then generated each number in the sequential order listed and combined each number with the content of Defendant's message to create "packets" consisting of one telephone number and the message content;

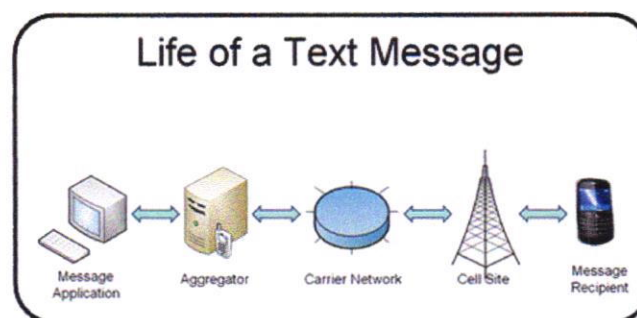
(3) Each packet was then transmitted in the sequential order listed to an SMS aggregator, which acts an intermediary between the Platform, mobile carriers (e.g. AT&T), and consumers.

(4) Upon receipt of each packet, the SMS aggregator transmitted each packet – automatically and with no human intervention – to the respective mobile carrier for the telephone number, again in the sequential order listed by Defendant. Each mobile carrier then sent the message to its customer’s mobile telephone.

50. The above execution these instructions occurred seamlessly, with no human intervention, and almost instantaneously. Indeed, the Platform is capable of transmitting thousands of text messages following the above steps in minutes, if not less.

51. Further, the Platform “throttles” the transmission of the text messages depending on feedback it receives from the mobile carrier networks. In other words, the platform controls how quickly messages are transmitted depending on network congestion. The platform performs this throttling function automatically and does not allow a human to control the function.

52. The following graphic summarizes the above steps and demonstrates that the dialing of the text messages at issue was done by the Platform automatically and without any human intervention:



53. Defendant’s unsolicited text message caused Plaintiff actual harm, including invasion of her privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant’s

text message also inconvenienced Plaintiff and caused disruption to his daily life.

CLASS ALLEGATIONS

PROPOSED CLASS

54. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of herself and all others similarly situated.

55. Plaintiff brings this case on behalf of the below defined Class:

All persons within the United States who, within the four years prior to the filing of this Complaint, were sent a text message using the same type of equipment used to text message Plaintiff, from Defendant or anyone on Defendant's behalf, to said person's cellular telephone number.

56. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class but believes the Class members number in the several thousands, if not more.

NUMEROSITY

57. Upon information and belief, Defendant has placed automated calls to cellular telephone numbers belonging to thousands of consumers throughout the United States without their prior express consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

58. The exact number and identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendants' call records.

COMMON QUESTIONS OF LAW AND FACT

59. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and

fact common to the Class are:

- (1) Whether Defendant made non-emergency calls to Plaintiff and Class members' cellular telephones using an ATDS;
- (2) Whether Defendant can meet their burden of showing that they obtained prior express written consent to make such calls;
- (3) Whether Defendant's conduct was knowing and willful;
- (4) Whether Defendant is liable for damages, and the amount of such damages; and
- (5) Whether Defendant should be enjoined from such conduct in the future.

60. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendants routinely transmits text messages to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

61. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

62. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

63. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the

Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

64. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT I
Violations of the TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)

65. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

66. It is a violation of the TCPA to make "any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system ... to any telephone number assigned to a ... cellular telephone service" 47 U.S.C. § 227(b)(1)(A)(iii).

67. The TCPA defines an "automatic telephone dialing system" (hereinafter "ATDS") as "equipment which has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." *Id.* at § 227(a)(1).

68. Defendant – or third parties directed by Defendant – used equipment having the capacity to store telephone numbers, using a random or sequential generator, and to dial such

numbers and/or to dial numbers from a list automatically, without human intervention, to make non-emergency telephone calls to the cellular telephones of Plaintiff and the other members of the Class.

69. These calls were made without regard to whether Defendant had first obtained express permission from the called party to make such calls. In fact, Defendant did not have prior express consent to call the cell phones of Plaintiff and the other members of the putative Class when its calls were made.

70. Defendant violated § 227(b)(1)(A)(iii) of the TCPA by using an automatic telephone dialing system to make non-emergency telephone calls to the cell phones of Plaintiff and the other members of the putative Class without their prior express consent.

71. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the class are also entitled to an injunction against future calls.

WHEREFORE, Plaintiff Terri Carfagno, on behalf of herself and the other members of the Class, prays for the following relief:

- a. A declaration that Defendant's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;
- b. A declaration that Defendant's violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, were willful and knowing;
- c. An injunction prohibiting Defendant from using an automatic telephone dialing system to call and text message telephone numbers assigned to cellular telephones without the prior express consent of the called party;

- d. An award of actual, statutory damages, and/or trebled statutory damages; and
- e. Such further and other relief the Court deems reasonable and just.

JURY DEMAND

Plaintiff and Class Members hereby demand a trial by jury.

DOCUMENT PRESERVATION DEMAND

Plaintiff demands that Defendant take affirmative steps to preserve all records, lists, electronic databases or other itemization of telephone numbers associated with Defendants and the communication or transmittal of the text messages as alleged herein.

Date: March 26, 2019.

Respectfully submitted,

EISENBAND LAW, P.A.

/s/ Michael Eisenband

515 E. Las Olas Boulevard, Suite 120

Ft. Lauderdale, Florida 33301

Michael Eisenband

Florida Bar No. 94235

Email:

MEisenband@Eisenbandlaw.com

Telephone: [REDACTED]

HIRALDO P.A.

Manuel S. Hiraldo, Esq.

Florida Bar No. 030380

401 E. Las Olas Boulevard

Suite 1400

Ft. Lauderdale, Florida 33301

Email: mhiraldo@hirdolaw.com

Telephone: [REDACTED]

Counsel for Plaintiff and the Class

- Stock Guns how negative reviews about Michael
Robinson.

TOPIC ARCHIVES: MICHAEL ROBINSON

ARTICLES

June 14, 2019 / Travis Johnson, Stock Gumshoe

What are those “Mysterious M-Boxes” teased by Nova-X Report?

*** This article was originally published as part of the Friday File on March 8, 2019. It has been (very) lightly updated and unlocked for everyone to read *** Today's teaser that we'll feed to the Thinkolator is from Michael Robinson for his Nova-X Report (\$79/year), and it sounds kind of familiar.... These Mysterious 'M-Boxes' [...]

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May 20, 2019 / Travis Johnson, Stock Gumshoe

Nova-X Report's “Productivity Supercharger” Stock

Michael Robinson has a “teaser article” out now, outlining some of his rationale for investing in a collaboration software company... but neglecting {ahem!} to mention the name of said company. So, naturally, questions roll in... and your friendly neighborhood Gumshoe does like to provide answers. The article in question is here if you want to [...]

 11 Comments [Read More »](#)

March 8, 2019 / Travis Johnson, Stock Gumshoe

Friday File: “Mysterious M-Boxes” and more

Since I added to a telecom/5G stock today, and I see that same stock being teased again this week, I thought I'd take this Friday opportunity to solve a teaser for you as I update you on my portfolio moves. The teaser is from Michael Robinson for his Nova-X Report (\$79/year), and it sounds kind [...]

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October 24, 2018 / Travis Johnson, Stock Gumshoe

What are John Boehner's "American Cannabis Summit" Stocks?

The Money Map folks have decided that it's time to go "all in" on cannabis, and for them that means starting a new investment research business that they call the National Institute for Cannabis Investors, and selling memberships in that group by teasing their favorite "special reports" on some appealing marijuana stocks that they'll give [...]

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National Institute for Cannabis Investors

Entry level research service that promises a new "Cannabis Investment Package" each month, recommending different stocks in the sector.

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October 23, 2018 / Travis Johnson, Stock Gumshoe

"Miracle Metal" powers "The Next Superstock?"

This particular ad from Ian Cooper has been running for six weeks or so, at least that I've seen, so it's not exactly "red hot" and brand new, but I'm still getting questions about it and the ad is still being circulated... and the stock being teased is down about 20% since I first saw [...]

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September 20, 2018 / Travis Johnson, Stock Gumshoe

"Kings of Canadian Cannabis" — Michael Robinson's "\$2,000,000 By This Time Next Year" Marijuana Teaser

Michael Robinson runs the technology/venture newsletters for Money Map Press, and he's out with yet another marijuana promo — after all, any newsletter that doesn't jump on board the marijuana stock rocket is deemed pretty much irrelevant these days, just like any newsletter without a "crypto expert" was ignored in January. So yes, now Michael [...]

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May 24, 2018 / Travis Johnson, Stock Gumshoe

Solved: Robinson's "Shape-Shifting 'Smart Metal'" Tease for 4,000% Gains?

Whew, we've got another doozy today! Michael Robinson is peddling his Radical Technology Profits by hinting at another life-changing technology idea, all based on a "shape shifting" smart metal called X-31 that he says will replace silicon. So, naturally, we want to dig in. As usual, we go in with eyes wide open, well aware [...]

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April 22, 2018 / Travis Johnson, Stock Gumshoe

"Assassin's Mace" and China's Master Plan for the South China Sea

This article was originally published on January 25, 2017. It has not been updated or revised since then, but we are seeing the same ad from Dr. Moors circulating heavily again (still with a January 2017 date), so re-post it here for your information. The stock teased has been quite volatile but currently is up [...]

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March 20, 2018 / Travis Johnson, Stock Gumshoe

Will "ADC" Mandate from Congress Make You a Millionaire <strike>on December 18</strike>by March 31st, 2018?

The latest "ADC" pitch from Michael Robinson has generated a lot of questions from readers this week, and the ad itself seems to be pretty much a carbon copy of the one sent out back in December... so we're just re-posting this teaser solution for you. What follows is unchanged from when it first appeared [...]

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March 2, 2018 / Travis Johnson, Stock Gumshoe

What's the "Tiny \$6 Million Company" with a "Stunning Patent Verdict?"

This piece originally appeared as part of the Friday File for the Irregulars on July 28, but has now been unlocked for everyone. The company reported quarterly results about two weeks ago that were generally well received, and has otherwise gotten more positive press and analyst upgrades over the past month, and the shares are [...]

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January 17, 2018 / Travis Johnson, Stock Gumshoe

What the heck is “NanoCrystal Electricity?” Will it “Magically Power Everything” and “pay out 78 times your money?”

Michael Robinson this week is pitching his Nova-X Report with a promise that “we’re about to witness one of the most massive rollouts in history” as a new “magic electricity” ends the days of wires and plugs and dead batteries and makes us all filthy, stinkin’ rich. So what the heck is he talking about? [...]

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June 12, 2017 / Travis Johnson, Stock Gumshoe

Examining the “One Device to End All Disease... And It Costs Less Than \$50” ad from Radical Technology Profits

That headline might look a little familiar to longtime Gumshoe readers... that’s because Michael Robinson had a very similar ad back in 2013 (and again in 2015) touting MEMS as a “device to end all disease” ... so, is the ad still about the same stock? Let’s look and see. Here’s how the pitch [...]

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April 24, 2017 / Travis Johnson, Stock Gumshoe

Nova-X “Market Crusher” Stocks — “How to Beat the Market by Ninefold”

I haven’t looked at a spiel from Michael Robinson in quite some time, so when a few readers forwarded his latest pitch for the Nova-X Report I thought I’d take a quick look for you. That newsletter, which is currently being sold for \$99, is getting the hype treatment with his pitch about marijuana investing, [...]

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November 9, 2016 / Travis Johnson, Stock Gumshoe

Rare Material Discovered off the coast of Florida... Godsend for millions of Americans?

You can skip this preamble if you don’t care to read another word about the election... I do have a non-election-related teaser pitch to share with you today... but since questions are swirling my way I should probably start by saying that yes, you may have noticed that we’ve now had a very shocking election [...]

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