

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

STATE OF TEXAS,
Plaintiff

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vs.

Case Number 1:20-cv-00435

LEADGEN SALES AND MARKETING
LLC and OKIE OLEN MILLER,
Individually
Defendants

PLAINTIFF’S ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff STATE OF TEXAS, acting by and through the Attorney General of Texas, KEN PAXTON, files this Complaint against LEADGEN SALES AND MARKETING, LLC, and OKIE OLEN MILLER, individually, and for causes of action would respectfully show as follows:

JURISDICTION AND VENUE

1. This action is brought by Attorney General Ken Paxton, through his Consumer Protection Division, in the name of the STATE OF TEXAS and in the public interest, pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227(g) (“TCPA”), the Texas Telemarketing Disclosure and Privacy Act, Tex. Bus. & Com. Code § 304.001 *et seq.* (“Texas No Call Act”), and the Texas Deceptive Trade Practices – Consumer Protection Act, Tex. Bus. & Com. Code 17.41 *et seq.* (“DTPA”).

2. This Court has jurisdiction over the subject matter of the claims under the TCPA pursuant to 47 U.S.C. § 227(g)(2). This Court further has jurisdiction over the subject matter of the claims under the TCPA pursuant to 28 U.S.C. § 1331, and has pendant jurisdiction over the subject matter

of the claims under the Texas No Call Act and DTPA pursuant to 28 U.S.C. § 1367.

3. Venue of this suit lies in the Western District of Texas, Austin Division pursuant to 47 U.S.C. § 227(g)(4) because violations of the TCPA occurred within the Western District of Texas, as more specifically alleged below. Venue further lies in the Western District of Texas, Austin Division pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claim alleged herein occurred within the Western District of Texas.

DEFENDANTS

4. Defendant Leadgen Sales and Marketing LLC ("Leadgen") is a limited liability company formed under the laws of the State of Florida, with its principal place of business at 5700 Memorial Hwy, Ste 221, Tampa, FL 33615. Defendant Leadgen may be served by serving its registered agent, Okie Miller, at 5700 Memorial Hwy, Ste 221, Tampa, FL 33615, or wherever he may be found.

5. Defendant Okie Olen Miller ("Miller") is an individual residing in the State of Florida, and may be served at his residence, 112 S. Trask St, Tampa, FL 33609, or wherever he may be found.

ACTS OF AGENTS

6. Whenever it is alleged in this petition that any Defendant did any act, it is meant that the Defendant performed or participated in the act or that Defendant's officers, agents or employees performed or participated in the act on behalf of and under the authority of a Defendant.

PUBLIC INTEREST

7. Plaintiff, STATE OF TEXAS, has reason to believe that Defendants have engaged in and continue to engage in a pattern or practice of initiating deceptive telephone calls to residents of the state of Texas which violate the TCPA, the Texas No Call Act, and the DTPA. Plaintiff also has

reason to believe that Defendants have caused and will continue to cause injury, loss and damage to the STATE OF TEXAS, and that the interests of the residents of Texas have been or are being threatened or adversely affected by Defendants' actions.

NATURE OF DEFENDANTS' OPERATIONS

8. Defendant Leadgen is a telemarketing company that generates sales leads (i.e. prospective customers) for its clients by making outbound telemarketing calls using an automated telephone dialing system that delivers a prerecorded message to the call recipient (typically referred to as robocalls).

9. Defendant Miller is solely owned and operated by Defendant Leadgen. Defendant Miller participates in the day to day operations of Defendant Leadgen and has directly participated in the conduct described below or has acted as the guiding spirit or central figure that has authorized the conduct described below.

10. Although Defendants are aware of the various federal and state telemarketing laws intended to protect the privacy of Texas consumers from unwanted and harassing phone calls, Defendants have willfully initiated calls to Texas consumers in complete disregard for such laws. For example, between 2010 and 2015, the Federal Communications Commission issued a Citation followed by a Notice of Apparent Liability, and ultimately a Forfeiture Order to Defendant Miller and/or companies he controlled. The 2015 forfeiture order imposed a civil penalty of almost \$3 million against Defendant Miller for "initiating 185 unsolicited, prerecorded advertising messages (a form of robocalls) to cell phones and residential telephone lines belonging to 142 consumers."

STATEMENT OF FACTS

11. Defendants, in generating leads for their clients, have placed abusive telemarketing calls

to the homes, offices, and cell phones of consumers nationwide, including in Austin, Texas. In placing such calls, Defendants utilize an automated telephone dialing system which, upon answer, delivers a prerecorded message.

12. When a consumer answers a robocall initiated by Defendants, the consumer is greeted by a recorded message, often advertising purported health insurance. Often, those messages are misleading. For example, Defendants often describe the health plans they offer as "Trump Care health plans," misleading consumers into believing the plans are sponsored by or affiliated with the federal government.

13. Defendants have also preyed on consumers fears of Covid-19 and the coronavirus by representing that the health plans Defendants have to offer cover coronavirus testing and treatment.

In particular, Defendants recorded message stated:

Hi, this is William with the Benefit Management Team. Trump Care health plans are now available. Plans starting as low as \$79.00 per month. **Many plans include coronavirus testing and treatment.** We can guarantee you the lowest cost on health insurance for you and your family. Learn your options, request free quotes, compare plans. Press 0 now to speak with the Trump Care advisor. Save over 50 percent with these plans. Whether or not you're self-employed, working without health insurance, retiring, or just want to save money, please press 0 right now for a free no obligation quote.

14. Many of the robocalls made by Defendants are also made to Texas consumers who have registered their telephone number on the federal and/or the Texas do-not-call list(s) (the "national do-not-call registry" and the "Texas do-no-call registry" respectively) precisely to avoid receiving such calls.

**FIRST CAUSE OF ACTION
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

15. Plaintiff realleges paragraphs one through fourteen and incorporates them herein as if set

forth here in full.

16. The TCPA, 47 U.S.C. § 227, *et seq.*, was enacted to, among other things, protect the privacy interests of residential and wireless telephone subscribers from invasive telemarketing practices, particularly the use of automated dialing equipment or prerecorded voices to make unsolicited telemarketing calls. The TCPA provides, for example, that it “shall be unlawful for any person within the United States, or any person outside the United States if the recipient is in the United States ... 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 or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service ...” 47 U.S.C. § 227(b)(1)(A)(iii).

17. Defendants have violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii) by making unsolicited telephone calls to Texas consumers’ cell phones using an automatic telephone dialing system and/or an artificial or prerecorded voice.

18. The TCPA mandates that the Federal Communications Commission promulgate rules implementing the statute. Those regulations in relevant part provide that “[n]o person or entity may ... initiate any telephone 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 or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service ...” 47 C.F.R. § 64.1200(a)(1)(iii). The regulations go on to provide that “[n]o person or entity may ... initiate, or cause to be initiated, any telephone call that includes or introduces an advertisement or constitutes telemarketing, using an automatic telephone dialing system or an artificial or prerecorded voice, to any [telephone number assigned to a ... cellular telephone

service] ... , other than a call made with the prior express written consent of the called party...”
47 C.F.R. § 64.1200(a)(2).

19. Defendants have violated 47 C.F.R. §§ 64.1200(a)(1)(iii) and 64.1200(a)(2) by making and/or causing to be initiated unsolicited telephone calls to Texas consumers’ cell phones using an automatic telephone dialing system and by making unsolicited telephone calls to Texas consumers’ cell phones using an artificial or prerecorded voice.

20. The regulations promulgated by the Federal Communications Commission pursuant to the TCPA further provide that “[n]o person or entity may ... [i]nitiate any telephone call to any residential line using an artificial or prerecorded voice to deliver a message without the prior express written consent of the called party” unless the call meets certain criteria not applicable in the present case. 47 C.F.R. § 64.1200(a)(3).

21. Defendants have violated 47 C.F.R. § 64.1200(a)(3) by initiating and/or causing to be initiated unsolicited telephone calls to Texas consumers’ residential phone lines using an artificial or prerecorded voice.

22. The regulations promulgated by the FCC pursuant to the TCPA further provide that “[n]o person or entity shall initiate any telephone solicitation to ... a residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry” 47 C.F.R. § 64.1200(c)(2).

23. Defendants have violated 47 C.F.R. § 64.1200(c)(2) by making calls to residential telephone numbers that are registered on the national do-not-call registry.

**SECOND CAUSE OF ACTION
VIOLATIONS OF THE TEXAS TELEMARKETING DISCLOSURE
AND PRIVACY ACT**

24. Plaintiff realleges paragraphs one through twenty-three and incorporates them herein as if set forth in full.

25. The Texas No Call Act makes it unlawful for a telemarketer to make a telemarketing call to a telephone number that has been published on the then-current Texas no-call list for more than sixty days. Tex. Bus. & Com. Code § 304.052. Defendants have violated the Texas No Call Act by making telephone calls to telephone numbers that were included on the then-current Texas no-call list for longer than sixty days.

THIRD CAUSE OF ACTION

VIOLATIONS OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT

26. Plaintiff realleges paragraphs one through twenty-five and incorporates them herein as if set forth in full.

27. The DTPA prohibits any false, misleading or deceptive acts and practices in the conduct of any trade or commerce, including:

- (i) Causing confusion or misunderstanding as to the source of goods or services; and
- (ii) Representing that goods or services have sponsorship, approval, characteristics, uses, or benefits that they do not have.

See Tex. Bus. & Com. Code §§ 17.46(a), (b)(2), and (5)

28. The Defendants' campaign of deceptive and harassing marketing calls, as set out in more detail above, violates the above provisions of the DTPA. For example, Defendants' description of their plans as Trump Care health plans false, deceptive, and misleading.

PRAYER

29. By reason of the acts and practices described herein above, Defendants have violated and will continue to violate the federal and state laws set forth above unless this Honorable Court enjoins them from doing so.

30. WHEREFORE, Plaintiff prays that Defendants be cited according to law to appear and answer herein; that after due notice and hearing a temporary injunction be issued on the terms set forth below; and that upon final hearing, a permanent injunction be issued, restraining and enjoining Defendants, their officers, agents, servants, employees, attorneys, and any other person in active concert or participation with Defendants, from violating the TCPA, the FCC regulations promulgated pursuant to the TCPA, the Texas No Call Act, and the DTPA including but not limited to:

- a. Placing any telephone call or causing any telephone call to be placed using an automated telephone dialing system to any cellular telephone number assigned to a Texas consumer;
- b. Placing any telephone call or causing any telephone call to be placed using an automated or prerecorded message to any cellular telephone number assigned to a Texas consumer;
- c. Placing any telephone call or causing any telephone call to be placed to any Texas telephone number that has been placed on the federal do-not-call registry or the Texas no-call list;

- d. Placing any telephone call or causing any telephone call to be placed using any automated or prerecorded voice message without the prior express, written consent of the call recipient;
- e. Placing any telephone call or causing any telephone call to be placed to any Texas telephone number without transmitting Defendant's accurate telephone number and business name to any caller identification service in use by the called party;
- f. Placing any telephone call or causing any telephone call to be placed to any Texas telephone number while transmitting any inaccurate or misleading caller ID information;
- g. Misrepresenting, directly or indirectly, the entity that is making any telephone call to a Texas telephone number, including but not limited to using any false caller ID information or using any unregistered business name;
- h. Misrepresenting, directly or indirectly, that any good or service has any sponsorship, affiliation, or approval that it does not have; and
- i. Misrepresenting, directly or indirectly, the characteristics, uses, or benefits of any goods or services offered.

31. In addition, Plaintiff STATE OF TEXAS respectfully prays that this Court adjudge against Defendants, jointly and severally, civil penalties in favor of Plaintiff STATE OF TEXAS in the following amounts for violations of the TCPA:

- a. Five Hundred and No/100 Dollars (\$500.00) for each violation of 47 U.S.C. § 227 and 47 C.F.R. § 64.1200; and

b. One Thousand Five Hundred and No/100 Dollars (\$1,500.00) for each such violation that was committed knowingly or willfully.

32. Plaintiff further respectfully prays that this Court adjudge against Defendants, jointly and severally, civil penalties in the amount of:

a. One Thousand and No/100 Dollars (\$1,000.00) for each violation of the Texas No Call Act; and

b. Three Thousand and No/100 Dollars (\$3,000.00) for each violation of the Texas No Call Act that was committed knowingly or willfully.

33. Plaintiff further respectfully prays that this Court adjudge against Defendants, jointly and severally, civil penalties in the amount of: \$10,000.00 per violation of the DTPA.

34. Plaintiff STATE OF TEXAS further prays that this Court order Defendants to pay all costs of Court, costs of investigation, and reasonable attorneys' fees pursuant to TEX. GOV'T CODE § 402.006(c).

35. The Plaintiff further prays that the Court grant all other relief to which the Plaintiff may show itself entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

JEFFREY C. MATEER
First Assistant Attorney General

RYAN L. BANGERT
Deputy First Assistant Attorney General

DARREN L. MCCARTY
Deputy Attorney General for Civil Litigation

JENNIFER S. JACKSON
Chief, Consumer Protection Division

/S/ Jacob Petry

JACOB A. PETRY
Assistant Attorney General
Texas State Bar No. SBN 24088219
Consumer Protection Division
300 W. 15th St.
Austin, TX 78701
(512) 475-4184
(512) 463-1267 (fax)
jacob.petry@oag.texas.gov

/S/ Patrick Abernethy

PATRICK ABERNETHY
Assistant Attorney General
Texas State Bar No. SBN 24109556
Consumer Protection Division
300 W. 15th St.
Austin, TX 78701
(512) 475-4757
(512) 463-1267 (fax)
Patrick.Abernethy@oag.texas.gov

COUNSEL FOR THE STATE OF TEXAS

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Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of April 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

Leadgen Sales and Marketing LLC
Registered agent: Okie Miller
5700 Memorial Hwy, Ste 221
Tampa, FL 33615

/S/ Jacob Petry

JACOB A. PETRY
Assistant Attorney General
Texas State Bar No. SBN 24088219
Consumer Protection Division
300 W. 15th St.
Austin, TX 78701
(512) 475-4184
(512) 463-1267 (fax)
jacob.petry@oag.texas.gov