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June 1, 2021

Squire Patton Boggs LLP
555 South Flower Street, 31st Floor
Los Angeles, CA 90071
Attn.: Eric J. Troutman

Re: Bad TCPA News: Plaintiff Permitted to Sue After Answering His Mother's Phone in Stunning Expansion of TCPA Standing Principles

Dear Mr. Troutman:

The above-referenced article by you, which was published on March 11, 2021, states: "[a] magistrate judge in New York just recommended a finding that a party who picked up his mother's phone– and thereby claims to have received a Robocall *he* didn't want without regard to whether *she* wanted it– has both Article III and statutory standing to sue under the TCPA," *i.e.*, the Telephone Consumer Protection Act, 47 U.S.C. § 227 (emphases are yours, as are all other emphases when this letter quotes your article). Your article also states: "[i]t is . . . unalleged whether *his mother*–the party to whom the call was addressed–wanted the call." However, as the next two paragraphs set forth, you knew that these statements were false.

You correctly state that I "claim[ed] to have received a Robocall [I] didn't want," as I had alleged as follows: "[t]he GoHealth Telephone Calls were not preceded by the written consent of anyone who had the legal authority to provide such consent." Second Am. Compl. (Dkt. No. 18), ¶ 67. Further, you clearly recognize that my mother had had the legal authority to provide consent: "[s]o, although the Plaintiff answered a call that was plainly intended for *his mother* on a phone line that belonged to *his mother*, the Court, nonetheless, found he had standing to sue because he received a call on *her* number that *he* didn't want." You and I would perhaps disagree on whether *I* had had the legal authority to provide consent. However, both you and I agree, as would a reasonable reader of your article, that my mother had had the legal authority to provide consent, for, as I had recognized before the District Court, and as was noted in the Report and Recommendation that your article was about, "consent by either plaintiff *or* his mother would have been a defense regardless of who the plaintiff was." *Bank v. Gohealth*, No. 19-cv-5459, Report and Recommendation (E.D.N.Y. March 8, 2021) ("R & R"; Dkt. No. 34) at 18 (my emphasis).

As shown by the above, your statement that "[i]t is . . . unalleged whether *his mother*–the party to whom the call was addressed–wanted the call" is plainly contradicted by my allegation that "[t]he GoHealth Telephone Calls were not preceded by the written consent of *anyone* who had the *legal authority to provide such consent*." Second Am. Compl., ¶ 67 (my emphases). Thus, you left the reader to wrongly believe that I might have brought a case that I knew lacked merit (that is, because my mother had consented to the call), whereas you *knew* that this was not so.

Your article states: "[r]epeat TCPA player Todd Bank was hanging out at his mom's house on a blistering hot Friday afternoon in New York back in August, 2019." It was helpful of you to include a link to the weather report on the date of the call, as I had not recalled such a detail. However, there is nothing that either I, nor the court, asserted that supports your statement that I had been "hanging out at [my] mom's house." You have no idea if that was true, right? You just thought it sounded cute or clever, didn't you? For all you know, I had arrived at my mother's home to drop something off. For all you know, I was standing outside my mother's home when I heard the telephone ring. For all you know, my mother brought the telephone outside to me and I never even entered her home that day.

Your article states: "[i]t is unclear whether Bank ever told his mother about the phone call or his intention to sue GoHealth for receiving a call intended for her." The word "unclear" means that there were inconsistent indications regarding an issue, or that something regarding an issue was difficult to understand. However, as there is nothing in any of the case filings that indicates anything regarding whether I had "ever told [my] mother about the phone call or [my] intention to sue GoHealth," nor anything that could cause confusion regarding these matters, you could have said something like "there is no indication in the record as to whether Bank ever told his mother about the phone call or his intention to sue GoHealth." I will, however, assume that you were just careless and that you used the word "unclear" to mean "unknown." I do so not out of respect for you, but out of respect for the First Amendment.

Your statement that "the Plaintiff answered a call that was plainly intended for *his mother* on a phone line that belonged to *his mother*," your statement that the "call [was] intended for her," and your statement that "*his mother* [was] the party to whom the call was addressed," suggest that the caller knew that it was calling to speak to my mother, but you do not refer to any evidence that the caller was even aware of my mother's existence (either by name or any characteristic, such as age, sex, etc.) or knew that the telephone number that was dialed belonged to my mother or, again, to anyone with any particular characteristic. Indeed, I trust that, as a TCPA defense lawyer, you are well aware that the type of scum you represent typically makes calls by scattershot, *i.e.*, without any knowledge as to whom is being called. Perhaps you missed the following part of the R & R: "Bank argues that the prerecorded voice did not indicate a desire to speak to anyone in particular and even when the first live person came on the phone, that person did not ask to speak to Bank's mother." R & R at 19. Perhaps you also missed my allegation that the prerecorded voice "never gave any indication that it, nor any person associated with it, had any idea who [I] was, nor that [I] was the person who answered the call," Second Am. Compl., ¶ 32, and "never gave indication that it, nor any person associated with it, had wished to speak to any person in particular." *Id.*, ¶ 33. Likewise, there was neither any allegation, nor any evidence, that either the prerecorded voice nor any live person asked for my mother. Indeed, neither the voice nor any live person even alluded to her, but, to the contrary, the Second Amended Complaint alleges, with evidence provided therein, that the person with whom I spoke was happy to do business with me even though I identified myself as someone with a last name that did not match my mother's last name. *See id.*, ¶¶ 37-63.

Your article states: "[o]n the plus side, however, Plaintiff was forced to provide a supplemental declaration—relied on to some degree by the court—to the effect that he spends 1/3 of his time at his mother's house. So, the argument goes, he wasn't truly just a random recipient of

a call that Friday afternoon, but a 1/3 user of the phone line. Maybe." As you surely know, I was not "forced to provide a supplemental declaration."

If you do not withdraw your defamatory statements **and** issue a corresponding retraction by 8:00 p.m. (ET) on Thursday, June 3, I will: (i) sue you, your law firm, National Law Forum, LLC, and Law Business Research Limited for defamation; and (ii) demand damages of $1,000 per day, retroactive to the date of this letter. These demands will not be subject to negotiation.

Sincerely,

s/ *Todd C. Bank*

Todd C. Bank

TCB/bd