

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

BRANDON CALLIER,

Plaintiff,

V.

HOLISTIC CHOICE LABS LLC, a Georgia Limited Liability Company

Defendant.

EP-25-cv-00606-KC

PLAINTIFF'S ORIGINAL COMPLAINT

PARTIES

1. Plaintiff BRANDON CALLIER (“Plaintiff”) is a natural person, resident of the Western District of Texas, and was present in Texas for all calls, in this case in El Paso County, Texas.
2. Defendant HOLISTIC CHOICE LABS LLC (“Defendant”) is a limited liability company organized and existing under the laws of Georgia and can be served via its registered agent, Kris Brown, 424 Columbia Industrial Blvd, #6, Evans, GA 30809.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over Count I under 28 U.S.C. § 1331, because the claims arise under the federal Telephone Consumer Protection Act, 47 U.S.C. § 227. *See Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 386-87 (2012) (holding that federal courts have federal question jurisdiction over private actions brought under the TCPA).
4. The Court has supplemental jurisdiction over Plaintiff's Texas state claims under 28 U.S.C. § 1337.

5. This Court has specific personal jurisdiction over Defendants because Defendants purposefully availed themselves of the State of Texas and of this District, and there is a sufficient relationship between Defendant's purposeful contacts with Texas and the litigation.

- a. Defendant targets Texas when marketing its products and regularly conducts business in this District, including by telephone solicitation.
- b. The purposeful text messages to Texas injured Plaintiff in Texas, creating a causal link between Defendant, the forum, and the litigation that exceeds the non-causal affiliation that is sufficient to support the specific personal jurisdiction. *See Ford Motor Co. v Mont. Eight Jud. Dist. Ct.*, 141 S. Ct. 1017 (2021).

6. Venue is proper under 28 U.S.C. § 1331(b)(1)-(2) because a substantial part of the events giving rise to the claims—the calls and sale of goods and services directed at Texas residents, including the Plaintiff—occurred in this District and because the Plaintiff resides in this District. Residing in the Western District of Texas, when he received a substantial, if not every single, text message from Defendant, which is the subject matter of this lawsuit.

**THE TELEPHONE CONSUMER PROTECTION ACT
OF 1991, 47 U.S.C. § 227**

7. In 1991, Congress enacted the TCPA to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See S. Rep. No. 102-178*, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

8. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an 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).

9. The TCPA makes it unlawful “to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party, unless the call is initiated for emergency purposes. 47 U.S.C. § 227(b)(1)(B).

10. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(b). 47 U.S.C. § 227(b)(3).

11. Separately, the TCPA bans making telemarketing calls without a do-not-call policy available upon demand. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(1).

12. The TCPA provides a private cause of action to persons who receive calls in violation of § 227(c) or a regulation promulgated thereunder. 47 U.S.C. § 227(c)(5).

13. The FCC recognizes that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

14. The FCC requires “prior express consent” for all autodialed or prerecorded telemarketing robocalls to wireless numbers and residential lines. In particular:[A] consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received clear and conspicuous disclosure of the consequences of providing the requested consent, *i.e.*, that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates. In addition,

the written agreement must be obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.

15. *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 FCC Rcd. 1830, 1844 ¶ 33 (2012) (footnote and internal quotation marks omitted). FCC regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *In the Matter of Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995).

16. The FCC confirmed this principle in 2013, when it explained that “a seller … may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.” *In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 FCC Rcd. 6574, 6574 ¶ 1 (2013).

17. Under the TCPA, a text message is a call. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 951 – 52 (9th Cir. 2009).

18. A corporate officer involved in the telemarketing at issue may be personally liable under the TCPA. *E.g., Jackson Five Star Catering, Inc. v. Beason*, Case No. 10-10010, 2013 U.S. Dist. LEXIS 159985, at *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have held that corporate actors can be individually liable for violating the TCPA where they had direct, personal participation in or personally authorized the conduct found to have violated the statute.” (internal quotation marks omitted)); *Maryland v. Universal Elections*, 787 F. Supp. 2d 408, 415 – 16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could avoid individual liability, the TCPA would lose much of its force.”).

TEXAS BUSINESS AND COMMERCE CODE CHAPTER 302

19. The Texas Business and Commerce Code requires sellers to obtain a registration certificate from the Secretary of State in order to make telephone solicitations inside the state of Texas or to residents located in the state of Texas.

20. “Telephone solicitation” means a telephone call a seller or salesperson initiates to induce a person to purchase, rent, claim, or receive an item.” Tex. Bus. & Com. Code § 302.001(7).

21. An “item” is defined as a property or service.” Tex. Bus. & Com. Code § 302.001(1).

22. “A person makes a telephone solicitation if the person effects or attempts to effect a telephone solicitation.” Tex. Bus. & Com. Code § 302.002.

23. A “seller” is defined as “A person who makes a telephone solicitation on the person’s own behalf.” Tex. Bus. & Com. Code §302.001(5).

24. A “salesperson” is defined as “A person who is employed or authorized by a seller to make a telephone solicitation.” Tex. Bus. & Com. Code §302.001(4).

25. Federal common law principles of agency apply to TBCC violations...and the conduct of the telemarketer who makes the calls can be imputed to the seller if the telemarketer is an agent of the seller. *Guardian v. Progressive Debt Relief, LLC*, No. EP-23-cv-235, 2023 WL 7393129, at *4 (W.D. Tex. Nov. 8, 2023); *see also Callier v. Tip Top Cap. Inc.*, No. EP-23-cv-437, 2024 WL 1637535, at *3 (W.D. Tex. Apr. 16, 2024) (holding that a seller violates § 302.101 when a telemarketer makes calls on behalf of a seller who does not hold a registration certificate); *Forteza v. Pelican Inv. Holdings Grp., LLC*, No. 23-cv-401, 2023 WL 9199001, at *6 (E.D. Tex. Dec. 27, 2023) (same); *Salaiz v. Beyond Fin., LLC*, No. EP-23-cv-6, 2023 WL 6053742, at *5 (W.D. Tex. Sept. 18, 2023) (refusing to dismiss a § 302.101 claim because “Plaintiff has

plausibly alleged that Defendant effected or attempted to effect the thirteen calls Plaintiff received by hiring telemarketers to make those calls.”).

26. The Plaintiff may seek damages for violations of Texas Business and Commerce Code § 302.101 of up to \$5,000 per violation, reasonable costs of prosecuting the action, court costs, investigation costs, deposition expenses, witness fees, and attorney’s fees.

27. Texas Business and Commerce Code § 302.101 provides a private right of action. A violation of Chapter 302 “is a false, misleading, or deceptive act or practice under Subchapter E, Chapter 17” and is enforceable as such: “A public or private right or remedy prescribed by Subchapter E, Chapter 17, may be used to enforce [Chapter 302.]” Tex. Bus. & Com. Code § 302.303.

28. The use or employment by any person of a false, misleading, or deceptive act or practice” causes “economic damages or damages for mental anguish.” Tex. Bus. & Com. Code § 17.50.

TEXAS BUSINESS AND COMMERCE CODE § 305.053

29. A person who receives a communication that violates 47 U.S.C. Section 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for damages in the amount provided by this section. Tex. Bus. & Com. Code § 305.053(a)(2).

30. A plaintiff who prevails in an action for damages under this section is entitled to the greater of \$500 for each violation or the plaintiff’s actual damages. Tex. Bus. & Com. Code § 305.053(b)(1-2).

31. The fact that a claimant has recovered under a private action arising from a violation of this chapter more than once may not limit recovery in a future legal proceeding in any manner. Tex. Bus. & Com. Code § 305.055.

FACTUAL ALLEGATIONS

32. Plaintiff registered his phone number on the National Do Not Call Registry in December 2007.

33. Plaintiff's phone number was on the National Do Not Call Registry for more than 31 days at all times relevant to this complaint.

34. Defendant is a company that markets and sells vitamins, gummies, and other health-related products via automated SMS text message marketing.

35. Plaintiff has never purchased any products from Defendant, visited Defendant's website, or otherwise had any dealings with Defendant.

36. Defendant had no reason to have Plaintiff's phone number in their system.

37. Defendant is owned and operated by Testino Management Group, LLC, and its owner, Joseph Paul Testino.

38. Defendant knew or should have known that their conduct would violate the TCPA and its regulations resulting from automated text messaging and the Texas Business and Commerce Code violations for failure to register for telephone solicitation in Texas.

39. On November 15, 2025, Plaintiff received an automated solicitation text message stating: Holistic Fruits & Veggies: Save 75% on our Superfood Vitamin Supplement for Adults & Kids! <https://sms.fruitsandveggiesoffer.com/v/WIVEZ>. Reply STOP to opt-out.

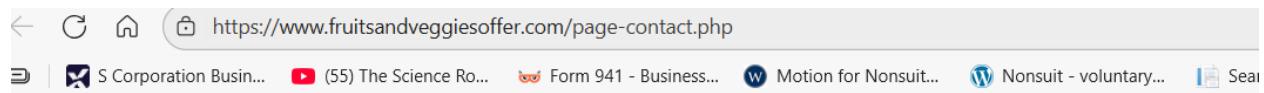
40. On November 15, 2025, Plaintiff received a solicitation picture text message from Defendant.

41. On November 18, 2025, Plaintiff received an automated solicitation text message stating: Holistic Fruits & Veggies: Last Chance to Claim 75% OFF our Superfood Daily Supplements! <https://sms.fruitsandveggiesoffer.com/v/S8bv8>. Reply STOP to end.

42. On November 18, 2025, Plaintiff received a solicitation picture text message from Defendant.

43. Clicking the links in the text messages takes Plaintiff to <https://fruitsandveggiesoffer.com>.

44. Clicking “Contact Us” on Defendant’s website took Plaintiff to a webpage that listed Holistic Choice Labs LLC as the owner of the website.



CONTACT US

Holistic Choice Labs, LLC
 454 Columbia Industrial Blvd., Ste. 6
 Evans, GA 30809
 Customer Support Email: support@fruitsandveggiesoffer.com

45. Plaintiff believes the text messages were automated because Defendant had no reason to have Plaintiff’s phone number in their system, random generation explains how Defendant obtained Plaintiff’s phone number, and the text messages included instructions to reply to opt-out of receiving text messages.

46. Plaintiff has limited data storage capacity on his cellular telephone. Incoming telemarketing text messages consumed part of this capacity.

47. On November 23, 2025, Plaintiff searched the Texas Secretary of State website at <https://direct.sos.state.tx.us/telephone/TelephoneSearch.asp> and found no telephone solicitation registration for Defendant.

48. Defendant has never been registered to telephone solicit in Texas or to Texas residents.

49. Each phone call alleged herein was made without a valid Texas telephone solicitation registration.

50. Every text was made without maintaining an internal do-not-call policy or training their agents/employees on the use of an internal do-not-call policy.

51. Plaintiff has limited data storage capacity on his cellular telephone. Incoming telemarketing texts consumed part of this capacity.

52. No emergency necessitated the calls.

TEXAS BUSINESS AND COMMERCE CODE § 302.101 VIOLATIONS

53. Plaintiff was located in Texas at all times during the calls at issue.

54. Defendant does not qualify for an exemption to the Texas telephone solicitation requirement.

55. Plaintiff searched: initial registration, bond canceled, pending, renewal registration, closed, and suspended registration. Plaintiff did not find any registration for Defendants.

56. Defendant has never been registered to telephone solicit from Texas or into Texas.

TEXAS BUSINESS AND COMMERCE CODE § 305.053 VIOLATIONS

57. A person who receives a communication that violates 47 U.S.C. Section 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for damages in the amount provided by this section.

Tex. Bus. & Com. Code § 305.053(a)(2).

58. The automated text messages Plaintiff received from Defendant violated 47 U.S.C. 227(b) and therefore violated TBCC § 305.053.

59. Plaintiff was on the National Do Not Call registry for more than 31 days prior to receiving the solicitation text messages. As a result, Defendant violated 47 U.S.C. 227(c) and therefore violated TBCC § 305.053.

INJURY, HARM, AND DAMAGES AS A RESULT OF THE CALLS

60. Defendant's calls harmed Plaintiff by causing the very harm that Congress sought to prevent—a “nuisance and invasion of privacy.”

61. Defendant's calls harmed Plaintiff by trespassing upon and interfering with Plaintiff's rights and interests in Plaintiff's cellular telephone.

62. Defendant's calls harmed Plaintiff by intruding upon Plaintiff's seclusion.

63. Plaintiff has been harmed, injured, and damaged by the calls, including, but not limited to: reduced device storage space, reduced data plan usage, anger, frustration, invasion of privacy, and more frequent charging of my cell phone.

64. Plaintiff incurred increased electric bills as a result of more frequent charging of his cell phone related to the unauthorized phone calls.

COUNT ONE:

(Non-Emergency Automated Calls to Cellular Telephones, 47 U.S.C. 227(b)(1)(A)

65. Plaintiff realleges and incorporates by reference every allegation set forth in paragraphs 1-65.

66. The foregoing acts and omissions of Defendant and/or their affiliates or agent constitute multiple violations of the TCPA, 47 U.S.C. § 227(b)(1)(A), by making non-emergency telemarketing robocalls to Plaintiff's cellular telephone numbers without his prior express written consent.

67. Plaintiff was statutorily damaged at least four (4) times under 47 U.S.C § 227(b)(3)(B) by Defendant by the telephone calls described above, in the amount of \$500.00 per call.

68. Plaintiff was further statutorily damaged because Defendant willfully or knowingly violated this subsection of the TCPA Plaintiff requests that the court treble the damages amount as permitted under U.S.C. § 227(b)(3)(C) for this willful or knowing violation.

COUNT TWO

(Violation of the TCPA “Sales Call/DNC” Prohibition, 47 U.S.C. § 227(c) et seq.)

69. Plaintiff realleges and incorporates by reference every allegation set forth in paragraphs 1-68.

70. Defendant called Plaintiff’s private residential telephone number, which was successfully registered on the National Do-Not-Call Registry more than thirty-one (31) days prior to the calls, in violation of 47 U.S.C. § 227(c)(3)(F), and 47 C.F.R. § 64.1200(c)(2).

71. Plaintiff was statutorily damaged at least four (4) times under 47 U.S.C. § 227(c)(3)(F) by Defendant by the text messages described above, in the amount of \$500.00 per call.

72. Plaintiff was further statutorily damaged because Defendant willfully or knowingly violated this subsection of the TCPA. Plaintiff requests that the court treble the damage amount as permitted under U.S.C. § 227(c)(5) for each and every willful or knowing violation.

73. As a result of Defendants’ violations of 47 U.S.C. § 227(c)(3)(F), and 47 C.F.R. § 64.1200(c)(2), Plaintiff seeks \$500 in statutory damages, or \$1,500.00 if trebled, for each and every violation, pursuant to 47 U.S.C. § 227(c)(3)(F)

COUNT THREE:

**(Violations of Texas Business Commerce Code 302.101
(Failure to Obtain a Telephone Solicitation Registration Certificate))**

74. Plaintiff realleges and incorporates by reference every allegation set forth in paragraphs 1-73.

75. The foregoing acts and omissions of Defendants and/or their affiliates or agents constitute multiple violations of the Texas Business and Commerce Code 302.101, by making four (4) non-

registered solicitation calls to Plaintiff's cellular telephone number without his prior express written consent.

76. Plaintiff is entitled to an award of up to \$5,000 in damages for each such knowing or willful violation. Texas Business and Commerce Code 302.302(a).

77. Plaintiff is entitled to an award of all reasonable costs of prosecuting the action, including court costs, investigation costs, deposition expenses, witness fees, and attorney's fees. Texas Business and Commerce Code 302.302(d).

COUNT FOUR:

Violations of Texas Business and Commerce Code 305.053 Pursuant to 47 U.S.C. § 227(c)

78. Plaintiff realleges and incorporates by reference every allegation set forth in paragraphs 1-77.

79. Defendant placed multiple solicitation text messages within a 12-month period to Plaintiff's cell phone, which had been on the National Do Not Call Registry for more than 31 days prior to the receipt of the first text message, in violation of 47 U.S.C § 227(c).

80. A person who receives a communication that violates 47 U.S.C. Section 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for damages in the amount provided by this section. Tex. Bus. & Com. Code § 305.053(a)(2).

81. A plaintiff who prevails in an action for damages under this section is entitled to the greater of \$500 for each violation or the plaintiff's actual damages. Tex. Bus. & Com. Code § 305.053(b)(1-2).

82. If the court finds that the defendant committed the violation knowingly or intentionally, the court may increase the amount of the award of damages under Subsection (b) to not more

than the greater of \$1,500 for each violation or three times the plaintiff's actual damages. Tex. Bus. & Com. Code § 305.053(c)(1-2).

83. The fact that a claimant has recovered under a private action arising from a violation of this chapter more than once may not limit recovery in a future legal proceeding in any manner. Tex. Bus. & Com. Code § 305.055

COUNT FIVE

Violations of Texas Business and Commerce Code 305.053 Pursuant to 47 U.S.C. 227(b)

84. Plaintiff realleges and incorporates by reference every allegation set forth in paragraphs 1-84.

85. Defendants placed automated text messages to Plaintiff's cellular phone in violation of 47 U.S.C. § 227(b)(1)(A).

86. A person who receives a communication that violates 47 U.S.C. Section 227, a regulation adopted under that provision, or Subchapter A may bring an action in this state against the person who originates the communication for damages in the amount provided by this section. Tex. Bus. & Com. Code § 305.053(a)(2).

87. A plaintiff who prevails in an action for damages under this section is entitled to the greater of \$500 for each violation or the plaintiff's actual damages. Tex. Bus. & Com. Code § 305.053(b)(1-2).

88. If the court finds that the defendant committed the violation knowingly or intentionally, the court may increase the amount of the award of damages under Subsection (b) to not more than the greater of \$1,500 for each violation or three times the plaintiff's actual damages. Tex. Bus. & Com. Code § 305.053(c)(1-2).

89. The fact that a claimant has recovered under a private action arising from a violation of this chapter more than once may not limit recovery in a future legal proceeding in any manner. Tex. Bus. & Com. Code § 305.055.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Brandon Callier prays for judgment against Defendant as follows:

- A. Leave to amend this Complaint to name additional DOESs as they are identified and to conform to the evidence presented at trial;
- B. A declaration that actions complained of herein by Defendant violate the TCPA and Texas state law;
- C. An injunction enjoining Defendants and their affiliates and agents from engaging in the unlawful conduct set forth herein;
- D. An award of \$1,500 per call in statutory damages arising from the TCPA 47 U.S.C. 227(b) intentional violations for four (4) calls;
- E. An award of \$1,500 per call in statutory damages arising from intentional violations of the Texas Business and Commerce Code 305.053, pursuant to 47 U.S.C. 227(b) for four (4) calls;
- F. An award of \$1,500 per call in statutory damages arising from the TCPA 47 U.S.C. 227(c) intentional violations for four (4) calls;
- G. An award of \$1,500 per call in statutory damages arising from intentional violations of the Texas Business and Commerce Code 305.053, pursuant to 47 U.S.C. 227(c) for four (4) calls;
- H. An award of \$5,000 per phone call in statutory damages arising from intentional violations of the Texas Business and Commerce Code 302.101 for four (4) calls;
- I. An award to Plaintiff of damages, as allowed by law under the TCPA;

- J. An award to Plaintiff of damages, as allowed by law under the TBCC;
- K. An award to Plaintiff of interest, costs, and attorneys' fees, as allowed by law and equity.
- L. Such further relief as the Court deems necessary, just, and proper.

Dated: December 2, 2025,

Respectfully submitted,

/s/ Brandon Callier

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