

**IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND  
FOR MIAMI-DADE COUNTY, FLORIDA**

**Case No.:**

TRAVIS McCLINTON,  
individually and on behalf of others  
similarly situated,

Plaintiff,

CLASS ACTION

v.

JURY TRIAL DEMANDED

CHOICE HEALTH INSURANCE, LLC,

Defendant.

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**CLASS ACTION COMPLAINT**

Plaintiff Travis McClinton brings this class action against Defendant Choice Health Insurance, LLC, and alleges as follows upon personal knowledge as to Plaintiff and Plaintiff's own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by Plaintiff's attorneys.

**NATURE OF THE ACTION**

1. This is a class action under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (the "TCPA").
2. Defendant uses prerecorded messages to advertise/market its goods and services to individuals' cellular phone numbers without first obtaining the required express written consent
3. Defendant's calls have caused Plaintiff and the Class members harm, including violations of their statutory rights, statutory damages, annoyance, nuisance, and invasion of their privacy.
4. Through this action, Plaintiff seeks injunctive relief to halt Defendant's illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life

of thousands of individuals. Plaintiff also seeks statutory damages on behalf of Plaintiff and members of the Class, and any other available legal or equitable remedies.

### **PARTIES**

5. Plaintiff is, and at all times relevant hereto was, an individual and a “person” as defined by 47 U.S.C. § 153(39).

6. Defendant is, and at all times relevant hereto was a “person” as defined by 47 U.S.C. § 153(39). Defendant directs, markets, and provides business activities throughout the State of Florida.

### **JURISDICTION AND VENUE**

7. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$30,000 exclusive of interest, costs, and attorney’s fees.

8. Defendant is subject to general jurisdiction in Florida because this suit arises out of and relates to Defendant’s significant contacts with this State. Defendant initiated and directed, or caused to be initiated and directed, telemarketing and/or advertisement prerecorded voice messages into Florida in violation of the TCPA.

9. Venue for this action is proper in this Court because facts giving rise to this action occurred in this circuit and class members reside in this circuit.

### **FACTS**

10. Starting on or about February 17, 2022, Defendant caused multiple prerecorded voice message calls to be transmitted to Plaintiff’s cellular telephone number ending in 6572 (“6572 Number”).

11. When Plaintiff listened to prerecorded message, she was easily able to determine that it was prerecorded. *Rahn v. Bank of Am.*, No. 1:15-CV-4485-ODE-JSA, 2016 U.S. Dist. LEXIS 186171, at \*10-11 (N.D. Ga. June 23, 2016) (“When one receives a call, it is a clear-cut fact, easily discernible to any lay person, whether or not the recipient is speaking to a live human being, or is instead being subjected to a prerecorded message.”).

12. Defendant’s prerecorded voice calls constitutes telemarketing because the purpose of the messages was to encourage Plaintiff to purchase Defendant’s products, goods and/or services.

13. Upon information and belief, Defendant caused other prerecorded messages to be sent to individuals residing within this judicial circuit.

14. Plaintiff never gave Defendant his prior express written consent to call him on his cellular telephone with a marketing prerecorded voice message.

15. Plaintiff is the sole user and/or subscriber of the 6572 Number at the time he got the message from Defendant.

16. Defendant’s unsolicited prerecorded voice message calls caused Plaintiff harm, including invasion of privacy, aggravation, and annoyance. Defendant’s call also inconvenienced Plaintiff, caused disruptions to Plaintiff’s daily life, caused Plaintiff to waste time dealing with Defendant’s unsolicited prerecorded voice message calls. Additionally, Defendant’s unsolicited messages violated Plaintiff’s substantive rights under the TCPA from be free from harassing calls like Defendant’s.

## **CLASS ALLEGATIONS**

### **PROPOSED CLASS**

17. Plaintiff brings this lawsuit as a class action on behalf of himself individually and on behalf of all other similarly situated persons as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3). The “Class” that Plaintiff seeks to represent is defined as:

**All persons in the United States, for the time period beginning July 28, 2018 through [date of entry of the Preliminary Approval Order] who were sent a prerecorded voice call by or on behalf of Choice Health regarding Defendant’s property, goods, and/or services where the lead data was provided by Zeeto to Digital Media Services, LLC.**

18. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the exact number of members in the Class but believes the Class members are at least 50 individuals.

**NUMEROSITY**

19. Upon information and belief, Defendant has placed prerecorded voice message calls to telephone numbers belonging to at least 50 persons throughout Florida and the United States without their prior express written consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

20. 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 Defendant’s call records.

**COMMON QUESTIONS OF LAW AND FACT**

21. 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’ telephones using a prerecorded message; [2] Whether Defendant can meet its burden of showing that it had 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.

22. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits prerecorded voice message calls without prior express written consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

**TYPICALITY**

23. 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**

24. 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**

25. 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.

26. 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**  
**VIOLATION OF 47 U.S.C. § 227(b)**  
***Individually and on behalf of the Class***

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

28. 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 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), and “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...” 47 U.S.C. § 227(b)(1)(B).

29. Defendant transmitted calls using an artificial or prerecorded voice to the telephone numbers of Plaintiff and members of the putative class.

30. 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 written consent to call the telephones of Plaintiff and the other members of the putative Class when its calls were made.

31. Defendant has, therefore, violated § 227(b)(1)(A)(iii) and § 227(b)(1)(B) of the TCPA by using an artificial or prerecorded voice to make non-emergency telephone calls to the

telephones of Plaintiff and the other members of the putative Class without their prior express consent.

32. Defendant knew that it did not have prior express consent to make these calls and knew, or should have known, that it was using an artificial or prerecorded voice. The violations were therefore willful or knowing.

33. 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. *Id.*

34. Because Defendant knew or should have known that Plaintiff and the other members of the putative Class had not given prior express consent to receive its prerecorded calls to their telephones, the Court should treble the amount of statutory damages available to Plaintiff and members of the putative Class, pursuant to § 227(b)(3) of the TCPA.

**WHEREFORE**, Plaintiff on behalf of himself and the other members of the Class, pray 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. An injunction prohibiting Defendant from using an artificial or prerecorded voice to contact telephone numbers without the prior express permission of the called party;
- c. An award of actual and statutory damages; and
- d. Such further and other relief the Court deems reasonable and just.

**JURY DEMAND**

Plaintiff, individually and on behalf of the Class, hereby demand a trial by jury.

**DOCUMENT PRESERVATION DEMAND**

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

DATED: June 10, 2024

Respectfully submitted,

**HIRALDO P.A.**

/s/ Manuel S. Hiraldo

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