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Betty Moore through her  
attorney in fact Alisha Gore

11  
12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 EASTERN DIVISION

15 BETTY MOORE through her attorney in )  
fact ALISHA GORE, individually and on )  
16 behalf of all others similarly situated, )  
17 Plaintiff, )  
18 v. )  
19 LEGION AUTO PROTECTION )  
SERVICES, WALCO FUNDING, LLC )  
20 AND CARGUARD )  
ADMINISTRATION, INC., )  
21 Defendants. )  
22

**CASE NO.**  
**CLASS ACTION COMPLAINT**  
**JURY TRIAL DEMANDED**

23  
24 Plaintiff, BETTY MOORE through her attorney in fact ALISHA GORE  
25 (hereinafter “Plaintiff”), brings this class action under Rule 23 of the Federal Rules  
26 of Civil Procedure against Defendants Legion Auto Protection Services (“Legion”),  
27 WalCo Funding, LLC (“WalCo Funding”) and CarGuard Administration, Inc.  
28 (“CarGuard”) (collectively “Defendants”) for their violations of the Telephone

1 Consumer Protection Act, 47 U.S.C. § 227 (hereinafter “the TCPA”), and the  
2 regulations promulgated thereunder. In support, Plaintiff alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this Class Action Complaint for damages, injunctive relief,  
5 and any other available legal or equitable remedies, resulting from the illegal actions  
6 of Defendants in negligently or willfully contacting Plaintiff on Plaintiff’s home  
7 telephone line, in violation of the Telephone Consumer Protection Act, 47 U.S.C. §  
8 227 (“TCPA”), thereby invading Plaintiff’s privacy, and for violation of the  
9 Electronic Funds Transfer Act, 12 C.F.R. § 1005.7(b)(7) (“EFTA”). Plaintiff alleges  
10 as follows upon personal knowledge as to herself and her own acts and experiences,  
11 and, as to all other matters, upon information and belief, including investigation  
12 conducted by her attorneys.

13 2. Plaintiff and each Class Member received unwanted telephone robocalls  
14 from Defendants. Plaintiff and Class members’ phone numbers were registered with  
15 the National Do-Not-Call Registry. This lawsuit challenges all calls that were sent  
16 by Defendants to Plaintiff and Class Members from approximately August 1, 2017,  
17 through the date of filing this class action complaint.

18 3. The TCPA was designed to prevent calls like the ones described within  
19 this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous  
20 consumer complaints about abuses of telephone technology – for example,  
21 computerized calls dispatched to private homes – prompted Congress to pass the  
22 TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

23 4. Additionally, the FCC has explicitly stated that the TCPA’s prohibition on  
24 automatic telephone dialing systems “encompasses both voice calls and text calls to  
25 wireless numbers including, for example, short message service (SMS) calls.”  
26 U.S.C.A. Const. Amend. 5; Telephone Consumer Protection Act of 1991, § 3(a), 47  
27 U.S.C. § 227(b)(1)(A)(iii). *Kramer v. Autobyte, Inc.*, 759 F. Supp. 2d 1165 (N.D.  
28 Cal. 2010).

1           5. In enacting the TCPA, Congress intended to give consumers a choice as to  
2 how creditors and telemarketers may call them and made specific findings that  
3 “[t]echnologies that might allow consumers to avoid receiving such calls are not  
4 universally available, are costly, are unlikely to be enforced, or place an inordinate  
5 burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end,  
6 Congress found that:

7           [b]anning such automated or prerecorded telephone calls to the home,  
8 except when the receiving party consents to receiving the call or when  
9 such calls are necessary in an emergency situation affecting the health  
10 and safety of the consumer, is the only effective means of protecting  
11 telephone consumers from this nuisance and privacy invasion.

12           *Id.* at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012  
13 WL 3292838, at \*4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on  
14 TCPA’s purpose).

#### 15                                   **JURISDICTION AND VENUE**

16           6. This Court has federal question subject matter jurisdiction pursuant to 28  
17 U.S.C. § 1331 and 47 U.S.C. § 227.

18           7. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2),  
19 because a substantial part of the events or omissions giving rise to the claims in this  
20 case occurred in this District, including Defendants’ transmission and marketing  
21 decisions regarding the unlawful and unwanted calls to Plaintiff which emanated  
22 from this District and their other operations in this District.

23           8. The Court has personal jurisdiction over Defendants because they conduct  
24 business in this state, maintain principal places of business in this state, market their  
25 services within this state, and/or have availed themselves to the jurisdiction of this  
26 state by placing calls, either directly or on their behalf, to Plaintiff and Class  
27 Members from this state and engaging in the unlawful telemarketing at issue in this  
28 state.

**PARTIES**

1  
2 9. Plaintiff’s domicile is in Tabor City, North Carolina.

3 10. Legion is a California company, located at 14071 Peyton Drive, Unit 905,  
4 Chino Hills, California 91709.

5 11. WalCo Funding is a Delaware limited liability company, located at 440 N.  
6 Wells Street, Suite 410, Chicago, Illinois 60654. Based upon information and belief,  
7 WalCo Funding has a principal place of business in Woodland Hills, California.

8 12. CarGuard is an Arizona company, located at 6991 E. Camelback Road,  
9 Suite C309, Scottsdale, Arizona, 85251.

10 13. Defendants, directly, individual, jointly, and/or in concert with each other,  
11 or through other persons, entities or agents acting on their behalf, created, approved,  
12 conspired to, agreed to, contributed to, authorized, assisted with, ratified, and/or  
13 otherwise caused all the wrongful acts and omissions, including the dissemination  
14 of the unsolicited calls that are the subject matter of this Complaint.

15 **FACTUAL ALLEGATIONS**

16 14. At all times relevant, Plaintiff, and at all times mentioned herein was, a  
17 “person” as defined by 47 U.S.C. § 153 (39).

18 15. Plaintiff registered her home telephone number ending in 3267 on the  
19 National Do-Not-Call (“DNC”) Registry on or about August 1, 2003.

20 16. Defendants, Legion and WalCo Funding are citizens of the State of  
21 California, and at all times mentioned herein were corporations and “persons,” as  
22 defined by 47 U.S.C. § 153(39).

23 17. At all times relevant Defendants conducted business, either directly and/or  
24 through their agents, in the State of California, within this judicial district.

25 18. Defendants are companies that engage in the marketing, sale, and finance  
26 of vehicle service contracts to consumers across the country.

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1 19. Defendant, Legion, is a sales agent, vendor, and/or dealer for the product  
2 and services promoted by Defendants through the use of the unlawful telemarketing  
3 campaign.

4 20. Defendant, WalCo Funding, is a payment plan provider for vehicle  
5 services contracts that are issued by Defendant CarGuard and sold by Legion  
6 through illegal telemarketing, including the telemarketing calls placed to Plaintiff  
7 and class members.

8 21. Defendant Walco Funding represents that it maintains “partnerships” with  
9 “direct marketers” like Defendant Legion.

10 22. Defendant, CarGuard, is the administrator and is the party responsible for  
11 administering the benefits of the vehicle service contracts that Legion promotes  
12 through its illegal telemarketing.

13 23. To increase the sales volume and profits of their products and services,  
14 Defendants and/or their authorized sales agents repeatedly called thousands of  
15 consumers using an automatic telephone dialing system in violation of the TCPA.

16 24. Defendants utilize autodialed telemarketing calls to market and advertise  
17 Defendants’ business, including at least two (2) calls to Plaintiff between  
18 approximately February and March 2021.

19 25. On each call, noticeable silence was heard for several seconds until the call  
20 was eventually transferred to a live agent.

21 26. Defendants and/or their authorized sales agents concealed or “spoofed”  
22 their actual phone number from Plaintiff and Class Members to trick Plaintiff and  
23 Class Members into answering calls that they believed were from a familiar number.

24 27. On each of the calls, an agent eventually identified themselves as Legion  
25 Auto Protection Services calling to sell and promote Defendants’ vehicle service  
26 contract product and services.

27 28. The calls were transmitted to Plaintiff’s home phone number ending in  
28 3267, and within the time period that is relevant to this action.

1           29. At no time did Plaintiff provide Plaintiff's home phone number to  
2 Defendants for the purpose of receiving telemarketing calls, nor did Plaintiff consent  
3 to receive such calls in any respect.

4           30. Plaintiff is the subscriber and a user of the 3267 Number and is financially  
5 responsible for phone service to the 3267 Number, including the costs and usage  
6 incurred as a result of the unlawful calls made to Plaintiff by Defendants.

7           31. Plaintiff Betty Moore is 76 years of age. Ms. Moore has appointed her  
8 granddaughter Alisha Gore as her attorney-in-fact to protect her interests, in part,  
9 through pursuing this litigation against the Defendants to stop unwanted telephone  
10 calls that prey on the elderly and to recover her hard-earned monies that have been  
11 wrongfully taken from her.

12           32. The content of the calls made to Plaintiff and the Class Members show that  
13 they were for the purpose of marketing, advertising, and promoting Defendants'  
14 business and services to Plaintiff as part of an overall joint telemarketing strategy.

15           33. Defendants placed the calls to Plaintiff and Class Members regardless of  
16 whether these individuals had provided express written consent or had registered  
17 their phone numbers on the National Do Not Call Registry.

18           34. These calls were not for emergency purposes as defined by 47 U.S.C. §  
19 227(b)(1)(A)(i).

20           35. Plaintiff did not provide Defendants or their agents prior express consent  
21 to receive these messages to her telephone; therefore, the unsolicited messages  
22 violated 47 U.S.C. § 227(b)(1).

23           36. Defendants are and were aware that they are transmitting unsolicited  
24 telemarketing calls to Plaintiff and other consumers without their prior express  
25 consent.

26           37. Plaintiff was damaged by Defendants' unsolicited telephone calls.  
27  
28

1 38. On one of the unsolicited calls, Legion's sales representative duped Betty  
2 Moore into purchasing a vehicle service contract for a vehicle that she does not even  
3 own or possess.

4 39. During this call, Legion obtained Plaintiff's personal banking information  
5 from her under false pretenses, including her bank account number and routing  
6 number. Upon information and belief, Legion failed to fully and properly instruct  
7 Plaintiff on how her banking information would be used, Defendants' intent to start  
8 automatic recurring debits from Plaintiff's account, and Plaintiff's right to cancel  
9 recurring debits from her account.

10 40. Defendants also failed to instruct Plaintiff on how to terminate the  
11 recurring debit charges in the written contract sent to her. The authorization for bank  
12 account direct debit sent to Plaintiff is below:

13  
14 **Payment Option 2: Authorization for Bank Account Direct Debit**  
15 Purchaser hereby authorizes Seller (and its Assignee) to instruct Purchaser's financial institution  
16 described below to make the payments due under this Agreement, in the amounts and on the  
17 dates disclosed under Payment Schedule, from the account listed below, by electronic  
18 automatic debit of Purchaser's checking or savings account. This authority will remain in effect  
19 until such time as the all amounts due under this Agreement are paid in full.

20 41. Plaintiff was damaged because she was required to part with her money  
21 and/or spending power to obtain a vehicle service contract that had absolutely no  
22 value or benefit to her because she did not own or possess the vehicle that is the subject  
23 of the supposed contract, and she had to undertake the burdens associated with all  
24 efforts to rescind the contract and to stop recurring debit charges to her bank account.

25 42. Plaintiff had no relationship with Defendants prior to these illegal phone  
26 calls.

27 **LIABILITY FOR CALLS PLACED BY THIRD PARTIES**

28 43. To the extent one or more Defendants outsourced their illegal robocalling,  
they are still liable for calls that violate the TCPA.

1           44. On May 9, 2013, the FCC determined that this was not a basis for avoiding  
2 liability within a Declaratory Ruling that held that sellers may not avoid liability by  
3 outsourcing telemarketing:

4           [A]llowing the seller to avoid potential liability by outsourcing its  
5 telemarketing activities to unsupervised third parties would leave  
6 consumers in many cases without an effective remedy for  
7 telemarketing intrusions. This would particularly be so if the  
8 telemarketers were judgment proof, unidentifiable, or located outside  
9 of the United States, as is often the case. Even where third-party  
10 telemarketers are identifiable, solvent, and amenable to judgment  
11 limiting liability to the telemarketer that physically places the call  
12 would make enforcement in many cases substantially more expensive  
13 and less efficient, since consumers (or law enforcement agencies)  
14 would be required to sue each marketer separately in order to obtain  
15 relief. As the FTC noted, because “[s]ellers may have thousands of  
16 “independent” marketers, suing one or a few of them is unlikely to  
17 make a substantive difference for consumer privacy.

18 *May 2013 FCC Ruling*, 28 FCC Rcd at 6588 (¶37) (internal citations omitted).

19           45. Moreover, the May 2013 FCC Ruling rejected a narrow view of TCPA  
20 liability, including the assertion that a seller’s liability requires a finding of formal  
21 actual agency and immediate direction and control over third parties who place a  
22 telemarketing call. *Id.* at 6587 n. 107.

23           46. The May 2013 FCC Ruling states that called parties may obtain  
24 “evidence of these kinds of relationships... through discovery, if they are not  
25 independently privy to such information.” *Id.* at 6592-593 (¶46). Moreover,  
26 evidence of circumstances pointing to apparent authority on behalf of the  
27 telemarketer “should be sufficient to place upon the seller the burden of  
28 demonstrating that a reasonable consumer would not sensibly assume that the  
telemarketer was acting as the seller’s authorized agent.” *Id.* at 6593 (¶46).

          47. Even if Defendants did not personally place the TCPA-violating calls,  
Defendants are still liable for the telemarketers’ actions if they took steps to cause



1 or approve the calls to be made, or if the calls were made pursuant to the Defendants’  
2 actual authority, apparent authority and/or ratification of the calls, and because they  
3 were acting as a joint enterprise or in concert with each other.

4 48. Defendants authorized their telemarketers to generate prospective  
5 customers. Defendants utilized a systematic telemarketing campaign whereby  
6 robocalls were placed in a seamless process to make it appear to Plaintiff and Class  
7 Members that Defendants were calling them directly from Defendants’ the  
8 telemarketing department.

9 49. Defendants hired, permitted, and enjoyed the benefits of the mass  
10 robocalling.

11 50. The FCC has explained that its “rules generally establish that the party  
12 on whose behalf a solicitation is made bears ultimate responsibility for any  
13 violations.” See *In re Rules & Regulations Implementing the TCPA*, CC Docket  
14 No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12397 (13)  
15 (1995).

16 51. The FCC stated within their January 4, 2008 ruling, that a company on  
17 whose behalf a telephone call is made bears the ultimate responsibility for any  
18 violations.

19 52. The May 2013 FCC Ruling held that, even in the absence of evidence of  
20 a formal contractual relationship between the seller and the telemarketer, a seller is  
21 liable for telemarketing calls if the telemarketer “has apparent (if not actual)  
22 authority” to make the calls. 28 FCC Rcd at 6586 (34).

23 53. Defendants requested and sought from its telemarketers to solicit  
24 particular target customer profiles on a mass scale.

25 54. Defendants specified the criteria of potential customers that would be  
26 most profitable for Defendants to sell to after they had been robocalled.

27 55. Defendants integrated their systems with their marketers so they could  
28 access the records of people with whom they executed contracts.

1 56. On information and belief, Defendants had access to the sales and  
2 customers generated by the illegal robocalling at issue in this case.

3 57. The May 2013 FCC Ruling also clarifies circumstances under which a  
4 telemarketer has apparent authority.

5 58. Defendants authorized their marketers to generate prospective customers  
6 for them.

7 59. Plaintiff reasonably believed that telemarketers who called her had  
8 received permission and instructions to conduct activity on behalf of Defendants.

9 60. Further, Defendants ratified the unlawful calls by knowingly accepting  
10 business that originated through illegal robocalls.

11 61. Despite being on notice of frequent violations, Defendants continue to  
12 work with companies that perform illegal robocalling.

13 62. By accepting these contacts and relying on them to execute contracts,  
14 Defendants “manifest[ed] assent or otherwise consent[ed]... to act” on behalf of its  
15 telemarketers, as described in the Restatement (Third) of Agency.

16 63. Defendants further ratified the TCPA violations by knowingly accepting  
17 the benefit of large volume of sales, despite that these sales were generated illegally.

18 64. Defendants took advantage of the violations by having their salespeople  
19 solicit the prospective customers while turning a blind eye to the way the potential  
20 customer was identified.

21 **CLASS ACTION ALLEGATIONS**

22 65. Plaintiff brings this class action under Rule 23(a),(b)(2), and(b)(3) of the  
23 Federal Rules of Civil Procedure on behalf of herself and of a similarly situated  
24 “Class” or “Class Members” defined as:

25 **Do Not Call Registry Class:** All people in the United States who from  
26 four years prior to the filing of this action (1) were called by or on behalf  
27 of Defendants; (2) more than one time within any 12-month period; (3)  
28 where the person’s telephone number had been listed on the National  
Do Not Call Registry for at least thirty days; (4) for the purpose of

1 selling Defendants' products and services; and (5) for whom  
2 Defendants claim (a) it did not obtain prior express written consent, or  
3 (b) it obtained prior express written consent in the same manner as  
4 Defendant claims it supposedly obtained prior express written consent  
to call the Plaintiff.

5 **Unauthorized Payment Class:** All people in the United States who  
6 from one year prior to the filing of this action (1) Legion or WalCo  
7 Funding subjected to one or more automatic recurring debit charges  
8 from a bank account for (2) a vehicle service contract sold by Legion.

9 66. Excluded from the Class are Defendants, and any subsidiary or affiliate of  
10 Defendants, and the directors, officers and employees of Defendants or their  
11 subsidiaries or affiliates, and members of the federal judiciary.

12 67. This action has been brought and may properly be maintained as a class  
13 action against Defendants pursuant to Rule 23 of the Federal Rules of Civil  
14 Procedure because there is a well-defined community of interest in the litigation and  
15 the proposed Class is easily ascertainable. Plaintiff reserves the right to amend the  
16 Class definition if discovery and further investigation reveal that any Class should  
17 be expanded or otherwise modified.

18 68. **Numerosity:** At this time, Plaintiff does not know the exact number of  
19 Class Members, but among other things, given the nature of the claims and that  
20 Defendant's conduct consisted of standardized telemarketing campaign calls placed  
21 to telephone numbers, Plaintiff believes, at a minimum, there are greater than forty  
22 (40) Class Members. Plaintiff believes that the Class is so numerous that joinder of  
23 all members of the Class is impracticable and the disposition of their claims in a  
24 class action rather than incremental individual actions will benefit the Parties and  
25 the Court by eliminating the possibility of inconsistent or varying adjudications of  
26 individual actions.

1           69. Upon information and belief, a more precise Class size and the identities  
2 of the individual members thereof are ascertainable through Defendant's records,  
3 including, but not limited to Defendant's calls and marketing records.

4           70. Members of the Class may additionally or alternatively be notified of the  
5 pendency of this action by techniques and forms commonly used in class actions,  
6 such as by published notice, e-mail notice, website notice, fax notice, first class mail,  
7 or combinations thereof, or by other methods suitable to this class and deemed  
8 necessary and/or appropriate by the Court.

9           **71. Existence and Predominance of Common Questions of Fact and Law:**  
10 There is a well-defined community of common questions of fact and law affecting  
11 the Plaintiff and members of the Class. Common questions of law and/or fact exist  
12 as to all members of the Class and predominate over the questions affecting  
13 individual Class members. These common legal and/or factual questions include,  
14 but are not limited to, the following:

- 15           a. Whether Plaintiff and Class Members registered a phone number on the  
16           National Do Not Call Registry;
- 17           b. Whether, within the four years prior to the filing of this Complaint,  
18           Defendants or their agents called a Class member two or more times to  
19           a phone number registered on the National Do Not Call Registry;
- 20           c. How Defendants obtained the numbers of Plaintiff and Class members;
- 21           d. Whether Defendants engaged in telemarketing when they initiated the  
22           calls which are the subject of this lawsuit;
- 23           e. Whether the calls made to Plaintiff and Class Members violate the  
24           TCPA and its regulations;
- 25           f. Whether Defendants willfully or knowingly violated the TCPA or the  
26           rules prescribed under it;

- 1 g. Whether Defendants Legion and/or WalCo Funding made or caused  
2 recurring debit charges to be made to Plaintiff and Class Members  
3 without their authorization and/or without instructing them on how to  
4 terminate such recurring debit charges;
- 5 h. Whether Defendants Legion and/or WalCo Funding violated the EFTA  
6 or the rules prescribed under it;
- 7 i. Whether Plaintiff and the members of the Class are entitled to statutory  
8 damages, treble damages, and attorney fees and costs for Defendants'  
9 acts and conduct;
- 10 j. Whether Plaintiff and members of the Class are entitled to a permanent  
11 injunction enjoining Defendants from continuing to engage in its  
12 unlawful conduct; and
- 13 k. Whether Plaintiff and the Classes are entitled to any other relief.

14 72. One or more questions or issues of law and/or fact regarding Defendants'  
15 liability are common to all Class Members and predominate over any individual  
16 issues that may exist and may serve as a basis for class certification under Rule  
17 23(c)(4).

18 73. **Typicality:** Plaintiff's claims are typical of the claims of the members of  
19 the Class. The claims of the Plaintiff and members of the Class are based on the  
20 same legal theories and arise from the same course of conduct that violates the  
21 TCPA.

22 74. Plaintiff and members of the Class each received at least one telephone  
23 call, advertising the Defendants' products or services, which Defendants placed or  
24 caused to be placed to Plaintiff and the members of the Class.

25 75. **Adequacy of Representation:** Plaintiff is an adequate representative of  
26 the Class because Plaintiff's interests do not conflict with the interests of the  
27 members of the Class. Plaintiff will fairly, adequately and vigorously represent and  
28 protect the interests of the members of the Class and has no interests antagonistic to

1 the members of the Class. Plaintiff has retained counsel competent and experienced  
2 in litigation in the federal courts, TCPA litigation, and class action litigation.

3       **76. Superiority:** A class action is superior to other available means for the fair  
4 and efficient adjudication of the claims of the Class. While the aggregate damages  
5 which may be awarded to the members of the Class are likely to be substantial, the  
6 damages suffered by individual members of the Class are relatively small. As a  
7 result, the expense and burden of individual litigation makes it economically  
8 infeasible and procedurally impracticable for each member of the Class to  
9 individually seek redress for the wrongs done to them. Plaintiff does not know of  
10 any other litigation concerning this controversy already commenced against  
11 Defendants by any member of the Class. The likelihood of the individual members  
12 of the Class prosecuting separate claims is remote. Individualized litigation would  
13 also present the potential for varying, inconsistent or contradictory judgments, and  
14 would increase the delay and expense to all parties and the court system resulting  
15 from multiple trials of the same factual issues. In contrast, the conduct of this matter  
16 as a class action presents fewer management difficulties, conserves the resources of  
17 the parties and the court system, and would protect the rights of each member of the  
18 Class. Plaintiff knows of no difficulty to be encountered in the management of this  
19 action that would preclude its maintenance as a class action.

20       **77. Class-Wide Injunctive Relief and Rule 23(b)(2):** Moreover, as an  
21 alternative to or in addition to certification of the Class under Rule 23(b)(3), class  
22 certification is warranted under Rule 23(b)(2) because Defendants have acted on  
23 grounds generally applicable to Plaintiff and members of Class, thereby making  
24 appropriate final injunctive relief with respect to Plaintiff and Class Members as a  
25 whole. Plaintiff seeks injunctive relief on behalf of Class Members on grounds  
26 generally applicable to the entire Class in order to enjoin and prevent Defendants'  
27 ongoing violations of the TCPA, and to order Defendants to provide notice to them  
28

1 of their rights under the TCPA to statutory damages and to be free from unwanted  
2 calls.

3 **COUNT I**  
4 **VIOLATION OF THE TCPA**  
5 **47 U.S.C. § 227**

6 **(Against Legion on Behalf of Plaintiff and the Do Not Call Registry Class)**

7 78. Plaintiff incorporates by reference all of the allegations contained in  
8 paragraphs 1 through 77 of this Complaint as though fully stated herein.

9 79. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides  
10 that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential  
11 telephone subscriber who has registered his or her telephone number on the national  
12 do-not-call registry of persons who do not wish to receive telephone solicitations  
13 that is maintained by the federal government.”

14 80. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable  
15 to any person or entity making telephone solicitations or telemarketing calls to  
16 wireless telephone numbers.”<sup>1</sup>

17 81. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall  
18 initiate any call for telemarketing purposes to a residential telephone subscriber  
19 unless such person or entity has instituted procedures for maintaining a list of  
20 persons who request not to receive telemarketing calls made by or on behalf of that  
21 person or entity.”

22 82. Any “person who has received more than one telephone call within any  
23 12-month period by or on behalf of the same entity in violation of the regulations  
24 prescribed under this subsection may” may bring a private action based on a  
25 violation of said regulations, which were promulgated to protect telephone  
26 subscribers’ privacy rights to avoid receiving telephone solicitations to which they  
27 object. 47 U.S.C. § 227(c).

28 <sup>1</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003)  
Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

1 83. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be  
2 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the  
3 Do Not Call Registry Class members who registered their respective telephone  
4 numbers on the National Do Not Call Registry, a listing of persons who do not wish  
5 to receive telephone solicitations that is maintained by the federal government.

6 84. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not  
7 Call Registry Class received more than one telephone call in a 12-month period made  
8 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.

9 85. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do  
10 Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §  
11 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations  
12 of 47 C.F.R. § 64.1200.

13 86. To the extent Defendant's misconduct is determined to be willful and  
14 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
15 statutory damages recoverable by the members of the Do Not Call Registry Class.

16 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
17 Class relief against Defendant, Legion, individually and jointly, as set forth in the  
18 Prayer for Relief below.

19 **COUNT II**  
20 **VIOLATION OF THE TCPA**  
21 **47 U.S.C. § 227**  
**(Against WalCo Funding on Behalf of Plaintiff and the Do Not Call Registry**  
**Class)**

22 87. Plaintiff incorporates by reference all of the allegations contained in  
23 paragraphs 1 through 77 of this Complaint as though fully stated herein.

24 88. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides  
25 that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential  
26 telephone subscriber who has registered his or her telephone number on the national  
27 do-not-call registry of persons who do not wish to receive telephone solicitations  
28 that is maintained by the federal government."



1 89. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable  
2 to any person or entity making telephone solicitations or telemarketing calls to  
3 wireless telephone numbers.”<sup>2</sup>

4 90. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall  
5 initiate any call for telemarketing purposes to a residential telephone subscriber  
6 unless such person or entity has instituted procedures for maintaining a list of  
7 persons who request not to receive telemarketing calls made by or on behalf of that  
8 person or entity.”

9 91. Any “person who has received more than one telephone call within any  
10 12-month period by or on behalf of the same entity in violation of the regulations  
11 prescribed under this subsection may” may bring a private action based on a  
12 violation of said regulations, which were promulgated to protect telephone  
13 subscribers’ privacy rights to avoid receiving telephone solicitations to which they  
14 object. 47 U.S.C. § 227(c).

15 92. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be  
16 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the  
17 Do Not Call Registry Class members who registered their respective telephone  
18 numbers on the National Do Not Call Registry, a listing of persons who do not wish  
19 to receive telephone solicitations that is maintained by the federal government.

20 93. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not  
21 Call Registry Class received more than one telephone call in a 12-month period made  
22 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.

23 94. As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do  
24 Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §  
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26  
27 <sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of*  
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003)  
Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

1 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations  
2 of 47 C.F.R. § 64.1200.

3 95. To the extent Defendant’s misconduct is determined to be willful and  
4 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
5 statutory damages recoverable by the members of the Do Not Call Registry Class.

6 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
7 Class relief against Defendant, WalCo Funding, individually and jointly, as set forth  
8 in the Prayer for Relief below.

9 **COUNT III**  
**VIOLATION OF THE TCPA**  
**47 U.S.C. § 227**

10 **(Against CarGuard on Behalf of Plaintiff and the Do Not Call Registry Class)**

11 96. Plaintiff incorporates by reference all of the allegations contained in  
12 paragraphs 1 through 77 of this Complaint as though fully stated herein.

13 97. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides  
14 that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential  
15 telephone subscriber who has registered his or her telephone number on the national  
16 do-not-call registry of persons who do not wish to receive telephone solicitations  
17 that is maintained by the federal government.”

18 98. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable  
19 to any person or entity making telephone solicitations or telemarketing calls to  
20 wireless telephone numbers.”<sup>3</sup>

21 99. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall  
22 initiate any call for telemarketing purposes to a residential telephone subscriber  
23 unless such person or entity has instituted procedures for maintaining a list of  
24 persons who request not to receive telemarketing calls made by or on behalf of that  
25 person or entity.”

26 \_\_\_\_\_  
27 <sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of*  
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003)  
Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)

1           100. Any “person who has received more than one telephone call within any  
2 12-month period by or on behalf of the same entity in violation of the regulations  
3 prescribed under this subsection may” may bring a private action based on a  
4 violation of said regulations, which were promulgated to protect telephone  
5 subscribers’ privacy rights to avoid receiving telephone solicitations to which they  
6 object. 47 U.S.C. § 227(c).

7           101. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be  
8 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the  
9 Do Not Call Registry Class members who registered their respective telephone  
10 numbers on the National Do Not Call Registry, a listing of persons who do not wish  
11 to receive telephone solicitations that is maintained by the federal government.

12           102. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not  
13 Call Registry Class received more than one telephone call in a 12-month period made  
14 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.

15           103. As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do  
16 Not Call Registry Class suffered actual damages and, under section 47 U.S.C. §  
17 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such violations  
18 of 47 C.F.R. § 64.1200.

19           104. To the extent Defendant’s misconduct is determined to be willful and  
20 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of  
21 statutory damages recoverable by the members of the Do Not Call Registry Class.

22           WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
23 Class relief against Defendant, CarGuard, individually and jointly, as set forth in the  
24 Prayer for Relief below.

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**COUNT IV**  
**VIOLATION OF THE EFTA**  
**12 C.F.R. § 1005.7(b)(7)**  
**(Against WalCo Funding on Behalf of Plaintiff)**

105. Plaintiff incorporates by reference all of the allegations contained in paragraphs 1 through 77 of this Complaint as though fully stated herein.

106. The EFTA's implementing regulation, 12 C.F.R. § 1005.7(b)(7), states that financial institutions must provide "a summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 1005.10(c)" as an initial disclosure.

107. According to 12 C.F.R. § 1005.2(h)(i), a financial institution is any institution "that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services."

108. 12 C.F.R. § 1005.10(c) provides that a consumer may stop electronic fund transfers "by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer."

109. 12 C.F.R. § 1005.10(c) also provides that if a financial institution requires written confirmation of stop-payment orders, the institution "shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification."

110. By providing Plaintiff an electronic fund transfer service, Defendant is a financial institution pursuant to 12 C.F.R. § 1005.2(h)(i).

111. Defendant violated 12 C.F.R. § 1005.7(b)(7) by failing to initially disclose to Plaintiff and all other similarly situated class members their right to stop payment of electronic fund transfers during the electronic fund transfer set up process.

112. Defendant violated 12 C.F.R. § 1005.7(b)(7) because the payment options provided to Plaintiff failed to provide a summary of the consumer's right to stop payment pursuant to 12 C.F.R. § 1005.10(c).

1 113. As a result of Defendant’s conduct as alleged herein, Plaintiff and all other  
2 similarly situated class members suffered actual damages and seek to recover their  
3 actual damages and/or any statutory damages permitted under the statute.

4 114. Upon information and belief, Defendant’s conduct was willful and  
5 knowing, including its violation of the EFTA because it knew that it had failed to  
6 instruct Plaintiff and Class Members on the manner in which they may terminate  
7 recurring debit charges. Accordingly, Plaintiff seeks treble damages, pursuant to 47  
8 U.S.C. § 227(c)(5), for herself and members of the EFTA Class.

9 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
10 Class relief against Defendant, WalCo Funding, individually and jointly, as set forth  
11 in the Prayer for Relief below.

12 **COUNT V**  
13 **VIOLATION OF THE EFTA**  
14 **12 C.F.R. § 1005.7(b)(7)**  
15 **(Against Legion on Behalf of Plaintiff)**

16 115. Plaintiff incorporates by reference all of the allegations contained in  
17 paragraphs 1 through 77 of this Complaint as though fully stated herein.

18 116. The EFTA’s implementing regulation, 12 C.F.R. § 1005.7(b)(7), states that  
19 financial institutions must provide “a summary of the consumer’s right to stop  
20 payment of a preauthorized electronic fund transfer and the procedure for placing a  
21 stop-payment order, as provided in § 1005.10(c)” as an initial disclosure.

22 117. According to 12 C.F.R. § 1005.2(h)(i), a financial institution is any  
23 institution “that directly or indirectly holds an account belonging to a consumer, or  
24 that issues an access device and agrees with a consumer to provide electronic fund  
25 transfer services.”

26 118. 12 C.F.R. § 1005.10(c) provides that a consumer may stop electronic fund  
27 transfers “by notifying the financial institution orally or in writing at least three  
28 business days before the scheduled date of the transfer.”

119. 12 C.F.R. § 1005.10(c) also provides that if a financial institution requires  
written confirmation of stop-payment orders, the institution “shall inform the

1 consumer of the requirement and provide the address where confirmation must be  
2 sent when the consumer gives the oral notification.”

3 120. By providing Plaintiff an electronic fund transfer service, Defendant is a  
4 financial institution pursuant to 12 C.F.R. § 1005.2(h)(i).

5 121. Defendant violated 12 C.F.R. § 1005.7(b)(7) by failing to initially disclose  
6 to Plaintiff and all other similarly situated class members their right to stop payment  
7 of electronic fund transfers during the electronic fund transfer set up process.

8 122. Defendant violated 12 C.F.R. § 1005.7(b)(7) because the payment options  
9 provided to Plaintiff failed to provide a summary of the consumer’s right to stop  
10 payment pursuant to 12 C.F.R. § 1005.10(c).

11 123. As a result of Defendant’s conduct as alleged herein, Plaintiff and all other  
12 similarly situated class members suffered actual damages and seek to recover their  
13 actual damages and/or any statutory damages permitted under the statute.

14 124. Upon information and belief, Defendant’s conduct was willful and  
15 knowing, including its violation of the EFTA because it knew that it had failed to  
16 instruct Plaintiff and Class Members on the manner in which they may terminate  
17 recurring debit charges. Accordingly, Plaintiff seeks treble damages, pursuant to 47  
18 U.S.C. § 227(c)(5), for herself and members of the EFTA class.

19 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
20 Class relief against Defendant, Legion, individually and jointly, as set forth in the  
21 Prayer for Relief below.

22  
23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff requests that the Court enter judgment in her favor  
25 and in favor of the class, against Defendants for:

- 26 a. An order certifying this case as a class action, certifying Plaintiff as  
27 representative of the Class, and designating Plaintiff’s counsel as Class  
28 counsel;

- b. Statutory damages of \$500 per call in violation of the TCPA;
- c. Willful damages at \$1,500 per call in violation of the TCPA;
- d. A declaration that Defendants’ practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)(iii);
- e. An injunction prohibiting Defendants from using an automatic telephone dialing system or prerecorded messages and an artificial voice to call numbers assigned to telephones without the prior express written consent of the called party;
- f. An injunction prohibiting Defendants from calling any individual whose number appears on the National Do Not Call Registry;
- g. Actual damages for violations of the EFTA, 15 U.S.C. § 1693m;
- h. Statutory damages for violations of the EFTA, 15 U.S.C. § 1693m;
- i. Reasonable attorney’s fees and costs, including such fees and costs as maybe recovered under the EFTA; and
- j. Such further and other relief as this Court deems reasonable and just.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury.

DATED: July 16, 2021

EDWARDS POTTINGER LLC

By: /s/ Seth M. Lehrman  
Seth M. Lehrman

Joshua H. Eggnatz (Fla. Bar No.: 0067926)  
EGGNATZ | PASCUCCI

Attorneys for Plaintiff  
Betty Moore through her attorney in fact  
Alisha Gore

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Legion Auto Protection Hit with Class Action Over Alleged CarGuard Vehicle Service Contract Robocalls](#)

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