

Demand for Damages for Excessive Calls

Date: _____

[name and address of company on whose behalf the calls were made]

To Whom It May Concern:

Since _____ *[date]*, I have received multiple phone calls from telemarketers calling on behalf of your company. I am giving your company the opportunity to settle my claim against you before I sue you in small claims court.

On or about _____ *[date]*, I received a telephone call at my home from a telemarketer by the name of _____, who stated that _____ *[he/she]* was calling on behalf of your company. I told this person that I was not interested in your company's product and asked that my name be placed on the "do not call" list for calls made on behalf of your company. I was assured that this would be done.

On or about _____ *[date]*, I received a second telephone call at my home from a telemarketer by the name of _____, who stated that _____ *[he/she]* she was calling on behalf of your company. I told this person that I was not interested in your company's product and asked that my name be placed on a "do not call" list for calls made on behalf of your company. Again, I was assured that this would be done.

[Repeat the above paragraph as needed, changing the word "second" to "third," "fourth," etc.]

Section 64.1200(d)(3) of Title 47 of the Code of Federal Regulations states, in pertinent part:

If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. **If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.** [47 CFR § 64.1200(d)(3) as amended 10-1-04.]

A violation of this regulation is actionable under 47 U.S.C. section 227(c)(5). That section provides that:

A person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may ... bring in an appropriate court of that state

(A) an action based on a violation of the regulations prescribed under this subsection to enjoin such violation,

(B) an action to recover for actual monetary loss from such a violation, or to receive up to \$500 in damages for each such violation, whichever is greater, or

(C) both such actions.

In addition, treble damages may be awarded for knowing and willful violations.

Your company clearly violated the law on _____ separate occasions. I am entitled to \$500 for each violation, for a total of \$_____.

[optional] Your company also violated state law. I am entitled to damages and/or civil penalties for those violations as well.

I am willing to forego my right to seek an injunction and treble damages against your company if you send me a cashier's check for the amount stated above within the next 30 days. If I do not hear from you within that time, I will seek all appropriate remedies in a court of law.

Sincerely,

Signature

Print name

Address

Home phone