**IN THE CIRCUIT COURT OF ST. LOUIS COUNTY
STATE OF MISSOURI**

SPENCER HECKATHORN, individually, and on behalf of all others similarly situated, Plaintiff, v. FARMERS INSURANCE EXCHANGE, FARMERS INSURANCE COMPANY, INC., and FIRE INSURANCE EXCHANGE, Defendants.	)	Case No.: **JURY TRIAL DEMANDED**

CLASS ACTION PETITION

COMES NOW Plaintiff Spencer Heckathorn, individually, and on behalf of all others similarly situated, through his undersigned counsel, and for his Class Action Petition against Defendants Farmers Insurance Exchange, Farmers Insurance Company, Inc., and Fire Insurance Exchange, states:

INTRODUCTION AND BACKGROUND ON THE TCPA

1. Plaintiff Spencer Heckathorn ("Plaintiff" or "Heckathorn") brings this case to protect his privacy rights, namely the right to be left alone from unwanted telemarketing communications.

2. Plaintiff brings this suit to get telemarketers like Farmers Insurance Exchange, Farmers Insurance Company, Inc., and Fire Insurance Exchange, (collectively "Defendants" or "Farmers"), to stop texting and calling his phone and the putative class members' phones despite

the fact Plaintiff and the putative class members registered their phone numbers on the National Do-Not-Call Registry ("DNC List").

3. In 1991, after passage with bipartisan support in Congress, President George H.W. Bush signed the Telephone Consumer Protection Act ("TCPA") into law, to protect consumers' privacy rights, namely, the right to be left alone from unwanted telemarketing calls. A leading sponsor of the TCPA described unwanted telemarketing calls as "the scourge of modern civilization." 137 Cong. Rec. 30821 (1991).

4. The TCPA affords protections for people who registered their phone numbers on the National Do Not Call Registry. Specifically, the TCPA provides that each person who receives more than one call on their phone after being registered on the National Do Not Call Registry is entitled to recover a penalty of up to $500 per call, and up to $1,500 per call if the TCPA is willfully or knowingly violated. *See* 47 U.S.C. § 227(c)(5).

5. Since 2003, persons who register their cell phone numbers on the DNC List are considered "residential subscribers" for the purpose of 227(c)(5) and the DNC List. *In Re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 F.C.C. Rcd. 14014, 14039 (2003) ("we will presume wireless subscribers who ask to be put on the national do-not-call list to be 'residential subscribers.'")

6. Decades after the TCPA passed into law, it is still unfortunately the case that "month after month, unwanted telemarketing calls and texts top the list of consumer complaints received by the [Federal Communications] Commission." *Omnibus TCPA Order*, 30 FCC Rcd. 7961, 7964 (F.C.C. July 10, 2015).

7. In fact, in 2021 alone, there were over five million do-not-call complaints to the FTC about unwanted telemarketing calls. Federal Trade Commission, *FTC Issues Biennial Report*

to Congress on the National Do Not Call Registry (Jan. 5, 2022) *available at*: https://www.ftc.gov/news-events/news/press-releases/2022/01/ftc-issues-biennial-report-congress-national-do-not-call-registry (last visited Aug. 1, 2023).

8. The private right of enforcement of the TCPA is critical to stopping the proliferation of these unwanted telemarketing calls. For example, while the Federal Communications Commission levied over $200 million in penalties against telemarketers between 2015 and 2018, it collected less than $7,000 of that amount. *See* Sarah Krouse, *The FCC Has Fined Robocallers $208 Million. It's Collected $6,790*, THE WALL STREET JOURNAL, March 28, 2019, https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803.

JURISDICTION AND PARTIES

9. This Court has jurisdiction over Defendants because Defendants have directed their marketing efforts, including telemarketing, in part, into the State of Missouri, including St. Louis County, Missouri.

10. This Court has personal jurisdiction over Defendants because Defendants transact business in the State of Missouri, conduct marketing in the State of Missouri, and otherwise continuously and systematically transact business in the State of Missouri. In addition, each of Defendant's exchanges, which are similar to unincorporated associations, have policyholders and/or members in the State of Missouri.

11. Heckathorn was (and is) a resident of and a citizen of the State of Oklahoma at all times relevant to this Complaint.

12. At all times relevant to this Complaint, Heckathorn was, and is still, the owner of a cell phone. His cell phone number is 918-XXX-2676.

13. Heckathorn registered his phone number on the DNC List on or about July 26, 2006, to avoid receiving unwanted telemarketing text messages.

14. Heckathorn's cell phone number is a personal phone number and is not a business line.

15. The monthly bill associated with Heckathorn's phone number is issued in Heckathorn's name, and not in the name of a business.

16. Heckathorn uses his cell phone primarily for residential purposes, such as communicating with friends and family members.

17. Defendants Farmers Insurance Exchange and Fire Insurance Exchange are separate inter-insurance exchanges existing under the laws of California, with their principal places of business in California.

18. Defendants Farmers Insurance and Fire Insurance Exchange are authorized to conduct business in California and throughout the United States, and which market and sell various insurance products in California and throughout the United States.

19. Defendant Farmers Insurance Company, Inc. is an insurance company authorized to conduct business in California and throughout the United States, and which markets and sells various insurance products throughout the United States, including in the State of Missouri.

20. Defendants Farmers Insurance Exchange, Fire Insurance Exchange and Farmers Insurance Company, Inc. (collectively "Farmers" or "Defendants") are part of the Farmers Insurance Group, an insurance organization consisting of more than twenty insurance entities, with its principal place of business in California.

21. Farmers' primary business is selling insurance products and services, including, but not limited to, automobile and homeowners' insurance.

22. Farmers markets its insurance products through a variety of marketing tactics including placing telemarketing text messages and telemarketing phone calls.

23. Heckathorn did not provide any form of consent to Defendants to contact him on his cell phone.

FARMERS' CONTROL OF ITS AGENTS' MARKETING

24. Farmers has agents throughout the United States who market and sell its insurance products.

25. Farmers' insurance agents are captive agents, meaning they are only permitted to sell Farmers' insurance products and cannot sell insurance products that compete with Farmers' insurance products.

26. When a person places a telephone solicitation concerning the sale of a Farmers insurance policy, that telemarketer is authorized by Farmers to sell only a Farmers' policy of insurance, and no other company's policy of insurance. In other words, a telemarketer sending a text message or placing a call to sell a Farmers insurance policy would only be texting or calling to sell a Farmers insurance policy, and no other insurance company's policies of insurance.

27. On information and belief, Farmers retains the unilateral and absolute right to control the use of its agents' marketing, including, but not limited to, requiring approval before using the Farmers name or logo.

28. On information and belief, any advertising or marketing method to be used by a Farmers agent is subject to the approval of Farmers.

29. On information and belief, Farmers' approval of marketing, including the use of the name Farmers, extends to telemarketing.

30. On information and belief, Farmers approved of the text messages and calls placed to Heckathorn and the texts and calls placed to the putative class members as described in this Complaint.

31. On information and belief, Farmers controls the geographic scope in which its agents may sell Farmers' products, and for which they may receive commissions.

32. On information and belief, Farmers retains the right to instruct its agents to not submit applications for insurance that were obtained from persons whose phone numbers were on the DNC List at the time they were texted or called by Farmers' agents. Furthermore, Farmers has the right to refuse to sell its insurance products to such persons.

33. On information and belief, after its agents contacted persons on the DNC list as described in this Complaint, Farmers sold insurance products to a number of those persons and received premiums from those sales.

34. On information and belief, Farmers at times pays for the marketing efforts of its captive agents.

35. Farmers underwrites the insurance policies marketed by its agents and guarantees the policies.

36. When an agent sells a Farmers insurance policy to a consumer, the premium is paid directly to Farmers. The agent that sold the policy will then receive a commission, which is paid by Farmers to the agent.

FARMERS' TELEPHONE SOLICITATIONS TO HECKATHORN

37. Despite not applying for insurance from Farmers or anyone else, in April and May of 2021, Heckathorn began receiving incessant telemarketing calls and text messages from Farmers.

38. On April 8, 2021, at approximately 10:21 a.m., Heckathorn received a text message that stated, "Hi Spencer, This is Nate and my Insurance agency received your request for an Insurance quote, we are currently working on that now for you. Would you prefer the quote texted or emailed to you?"

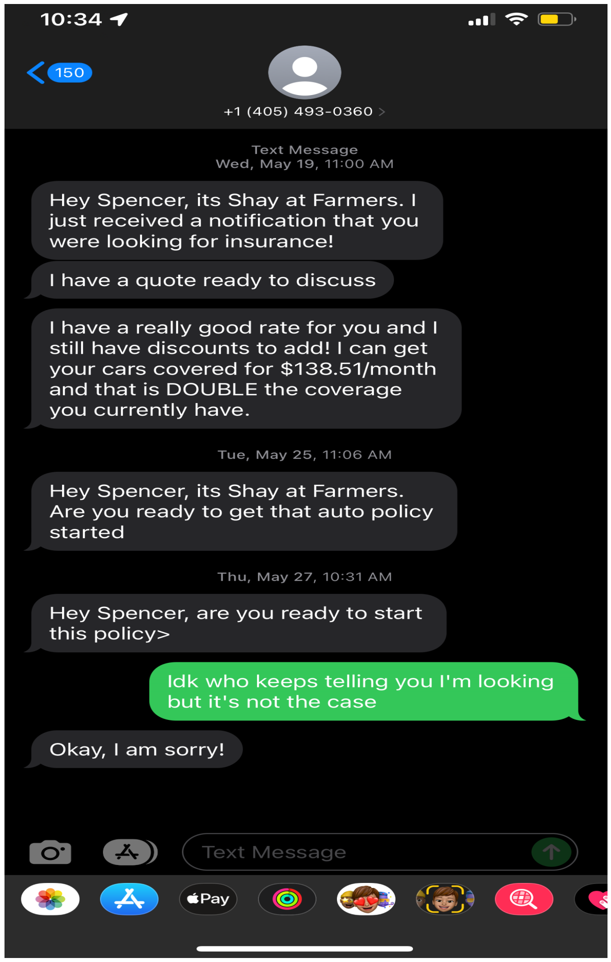
39. The text message appeared to have been sent from phone number 405-655-5166.

40. On April 8, 2021, at 4:06 p.m., Heckathorn received another text message from the same number. The message stated, "Thank you for the opportunity to earn your business. Please take a moment to review the quote comparison I've prepared for you. If you have any questions, please don't hesitate to ask. Your quote is ready at: https://app.agencymvp.com/compare/z_zzXScdv8kPFsMXyGLs. You can always reach me at 405-757-2767."

41. On April 9, 2021, Heckathorn received another text message from the same number, stating, "Hi Spencer, I worked on your insurance quote from yesterday. When might be a good time to go connect and go over the coverages with you?"

42. The phone number 405-757-2767 is the phone number for a Farmers insurance agent named Nate Esparza.

43. On May 19, 2021, through May 27, 2021, Heckathorn was harassed by another Farmers insurance agent, who sent him the following text messages:



44. On information and belief, "Shay at Farmers" is Shayna Wood, a Farmers insurance agent.

45. Ms. Wood's photograph and contact information is located on the Farmers website at https://agents.farmers.com/ok/bethany/shayna-wood/.

46. Ms. Wood's profile on the Farmers website includes the Farmers logo and states that Ms. Wood is a "Farmers Insurance Agent" located in Bethany, Oklahoma.

47. The Farmers website states that Ms. Wood is "your local Farmers® agent in Bethany, Oklahoma" and identifies a variety of insurance products sold by Farmers.

48. On information and belief, at all times material to this Complaint, Ms. Wood's e-mail address was SWood@farmersagent.com.

49. Despite Heckathorn responding to the text message that he was not looking for insurance, on June 2, 2021, Heckathorn received a voicemail that appeared on Heckathorn's phone, as originating from phone number 405-848-6832.

50. The voicemail stated, "Hey Spencer, it's Shay at Farmers. Give me a call when you have a chance. Thanks, bye."

51. The phone number 405-848-6832 is associated with a Farmers insurance agent named Mary Huffman.

52. On information and belief, the calls Shay Wood placed were placed on behalf of Mary Huffman.

53. Ms. Huffman's photograph and contact information is located on the Farmers website at https://agents.farmers.com/ok/oklahoma-city/92841200-mary-huffman/home-insurance/.

54. The phone number 405-848-6832 is located below Ms. Huffman's photograph and the Farmers logo on the Farmers website.

55. Ms. Huffman's profile on the Farmers website includes the Farmers logo and states that Ms. Huffman is a "Farmers Home Insurance Agent" located in Oklahoma City, Oklahoma.

56. The Farmers website states that Ms. Huffman is "your local Farmers® agent."

57. Again, despite not having requested an insurance quote from Farmers, another Farmers insurance representative contacted Heckathorn on March 2, 2022, by sending Heckathorn two text messages. These text messages appeared on Heckathorn's phone as having originated from phone number 918-205-4647.

58. The first text message sent to Heckathorn appears to be a picture of a business card containing the Farmers logo. The business card is that of a person named Jason Hall located in

Tulsa, Oklahoma, with a phone number of 918-388-3933 and an e-mail address of jhill4@farmersagent.com.

59. The second text message stated, "Hi Spencer! This is Jason with Farmers Insurance. We received your request for an insurance quote on your vehicles and would be happy to help you with that! Do you prefer a phone call or texting?"

60. Mr. Hall's LinkedIn profile states that between January and August 2022 he was an "Insurance Agent" for "Farmers Insurance."

61. Farmers' harassment continued into the next year.

62. On March 2, 2023, Heckathorn received a call on his phone from Farmers, and appeared on his phone as having originated from phone number 405-275-6325.

63. Phone number 405-275-6325 is the phone number of a Farmers insurance agent named Brian Shirey.

64. On information and belief, Mr. Shirey's photograph and contact information was formerly located on the Farmers website.

65. On information and belief, the phone number 405-848-6832 was formerly located below the Farmers logo on the Farmers website.

66. Although Heckathorn did not own a home and did not request any quote or information from Farmers, on May 11, 2023, he received a text message from another Farmers insurance agent. The text message stated, "Hi Spencer, this is Brayden with Farmers Insurance, LeNard Rhone agency. I received a quote started for you. It is coming in at a great rate! Would you like me to send it by text or email? Text STOP to stop texts from this agency, or STOPALL to stop all texts & calls from Farmers." The phone number that appeared on Heckathorn's phone that was associated with the text message was 918-992-7046.

67. At the time he received this text message, Heckathorn also received a phone call on his cell phone from "Brayden." Brayden identified himself as a representative of Farmers. Heckathorn told Brayden he wanted no further communication from Farmers.

68. On information and belief, the call and texts were placed by "Brayden" on behalf of Le Nard Rhone.

69. Mr. Rhone's photograph and contact information in McAlester, Oklahoma is located on the Farmers website at https://agents.farmers.com/ok/mcalester/le-nard-rhone/.

70. Ms. Rhone's profile on the Farmers website includes the Farmers logo and states that Mr. Rhone is "proud to serve McAlester as your local Farmers® agent."

71. The Farmers webpage for Mr. Rhone identifies various types of insurance offered for sale, including automobile insurance.

72. Notably, neither Heckathorn nor the putative class members provided Defendants, nor any of its agents, any form of consent to contact him on his cell phone via text message or by any other means.

DIRECT AND VICARIOUS LIABILITY

73. Without the benefit of discovery, and because Defendants disclosed their identity in the telemarketing calls and text messages at issue, Heckathorn assumes Defendants' agents directly sent the telephone solicitations at issue.

74. However, if some or all the communications at issue were made by third-party/parties on behalf of Defendants, in the alternative, Defendants are vicariously liable for those communications.

75. On May 9, 2013, the FCC determined that telemarketers like Defendants could not avoid liability by outsourcing telemarketing:

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

In re: Dish Network, LLC, 28 F.C.C. Rcd. 6574 at 6588 (May 9, 2013) (internal citations omitted).

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

77. The evidence of circumstances pointing to apparent authority on behalf of the telemarketer "should be sufficient to place upon the seller the burden of demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller's authorized agent." *Id.* at 6593.

78. If Defendants directly placed the telephone solicitations at issue to Heckathorn, Defendants are directly liable for the sending of those communications.

79. However, Defendants may have hired, encouraged, permitted, and enjoyed the benefits of mass telemarketing by third-party telemarketers.

80. If Defendants did not directly place the telephone solicitations to Heckathorn, Defendants' third-party telemarketers had actual and/or apparent authority to act on behalf of Defendants.

81. Likewise, Defendants also ratified their agents' violations of the TCPA by accepting insurance premiums from sales initiated by unlawful telemarketing communications.

82. Defendants controlled or had the right to control the marketing activities of those acting on their behalf.

83. Defendants acted as principals to telemarketing agent(s) who were acting on their behalf.

84. Defendants are not permitted under the law to outsource and contract their way out of liability by directing and benefitting from their captive agents' TCPA violations.

85. For the counts identified below, if Defendants directly placed the text messages at issue, they are directly liable. Alternatively, to the extent any telephone solicitations were placed by a third-party agent(s) acting on Defendants' behalf, Defendants are vicariously liable for those communications.

Class Allegations

86. Pursuant to Missouri Supreme Court Rule 52.08, Heckathorn brings this lawsuit as a class action on behalf of himself, and all others similarly situated. This action satisfies the requirements of Rule 52.08.

87. Heckathorn seeks to represent the following class:

> From April 19, 2020 to the date of class certification, all persons: (1) who received two or more text messages or phone calls from Nickolas Ward, Nate Esparza, Kyle Ryan Gray, Dustin Huffman, Jason Hall, Brian Shirey and/or LeNard Rhone and their agencies during a 12-month period in connection with the marketing of Farmers' products or services; (2) whose number was registered on the Do Not Call Registry for more than 30 days at the time the calls or texts were received; and (3) whose number is registered to an individual and not a business. ("Settlement Class")
>
> The class consists of 12,545 class members identified in the files produced by third parties. Excluded from the Settlement Class are Plaintiff's counsel, Farmers, as well as the officers, directors, and employees of Farmers and the immediate family members of such persons, and the members of the Missouri judiciary.

88. Heckathorn reserves the right to add administrative subclasses, or to amend the definition of the proposed class, during the lawsuit proceedings.

89. The members of the proposed class are so numerous that joinder of all members is impracticable. Heckathorn reasonably believes that hundreds or thousands of people have been harmed by Defendants' actions. The phone numbers of the members of the proposed class are readily identifiable through records available to Defendants or those acting on its behalf.

90. Most members of the proposed class have suffered damages in an amount such that it would make filing separate lawsuits by individual members economically infeasible.

91. On information and belief, Defendants have called and texted and continues to call and text people whose numbers are registered on the DNC List. It is reasonable to expect that Farmers will continue to place such calls and text messages, absent this lawsuit.

92. Common questions of law and fact exist as to all members of the proposed class and predominate over any questions affecting only individual members. The questions of law and fact common to the proposed class include, but are not limited to:

a. Whether Defendants' conduct of placing calls and text messages to persons whose phone numbers are registered on the DNC List violates 47 U.S.C. § 227(c);

b. Whether the text messages and calls were "solicitations" as defined by the TCPA;

c. whether Defendants maintained and implemented legally sufficient protocols for obtaining consumer "consent" to place telemarketing calls or messages to numbers on the DNC;

d. Whether Defendants' conduct violates the rules and regulations implementing the TCPA; and,

e. Whether Heckathorn and the putative class members are entitled to increased damages for each violation based on the willfulness of Defendants' conduct.

93. Heckathorn's claims are typical of the claims of the proposed class members because his claims arise from the same practice that gives rise to the claims of the members of the proposed class and are based on the same legal theories.

94. Heckathorn and his counsel will fairly and adequately protect the interests of the members of the proposed class. Heckathorn's interests do not conflict with the interests of the proposed class he seeks to represent. Heckathorn has retained lawyers who are competent and experienced in class action litigation, TCPA litigation and consumer law.

95. Heckathorn's counsel will vigorously litigate this case as a class action, and Heckathorn and his counsel are aware of their responsibilities to the putative members of the class and will discharge those duties.

96. A class action is superior to all individual lawsuits for this controversy. Joinder of all proposed members of the proposed class in one action is impracticable if not impossible and prosecuting hundreds or thousands of individual actions is not feasible. The size of the individual claims is likely not large enough to justify filing a separate action for each claim. For many, if not most, members of the proposed class, a class action is the only procedural mechanism that will allow recovery. Even if members of the proposed class had the resources to pursue individual litigation, that method would be unduly burdensome to the courts. Individual litigation could also result in inconsistent adjudications.

97. In contrast, a class action is superior in that it will benefit the court and litigating parties through efficiency, economy of scale and unitary adjudication resulting from supervision of the litigation by a single court.

98. Questions of law and fact, particularly the propriety of placing text messages and calls to phone numbers on the DNC List, predominate over questions affecting only individual members.

99. Defendants have acted or refused to act on grounds that apply generally to the class, making final injunctive relief or corresponding declaratory relief appropriate with respect to the class as a whole.

Count I - Violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227(c) *et seq.* (National DNC List Violations)

100. Heckathorn incorporates by reference the allegations of the previous paragraphs as if fully stated in this Count.

101. The TCPA provides that is a violation of the law for a person whose phone number is registered on the DNC List to receive more than one call on their phone "within any 12-month period by or on behalf of the same entity." *See* 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. § 64.1200(c)(2).

102. The penalty for each call placed in violation of the TCPA's restrictions on calling phone numbers registered on the DNC List is up to $500 per call and up to $1,500 per call if the violation is determined to be willful. *See* 47 U.S.C. § 227(c)(5).

103. In addition, the TCPA allows the Court to enjoin Defendants' violations of the TCPA's regulations prohibiting calls to phone numbers registered on the National Do-Not-Call Registry. *See* 47 U.S.C. § 227(c)(5)(A).

104. By placing calls and texts to Heckathorn and the putative class members' phone numbers, which were registered on the DNC List, Defendants violated the TCPA, including, but not limited to, 47 U.S.C. § 227(c)(1) and the TCPA's corresponding regulations.

105. Defendants and/or those acting on its behalf knew or should have known that Heckathorn's and the putative class members' phone numbers were registered on the DNC List.

106. Defendants and/or those acting on its behalf willfully violated the TCPA when placing the text messages and calls to Heckathorn's and the putative class members' phones.

107. Heckathorn and the putative class members are entitled to damages of up to $500.00 per violation for each call made by Defendants and/or those acting on its behalf that the Court finds violates the TCPA and up to $1,500.00 per violation if the Court finds that Defendants and/or those acting on its behalf willfully violated the TCPA.

PRAYER FOR RELIEF

WHEREFORE Plaintiff Spencer Heckathorn, individually, and on behalf of all others similarly situated, request that the Court:

a. Enter an order pursuant to Missouri Supreme Court Rule 52.08, certifying the proposed class, appointing Heckathorn as the class representative, and appointing Heckathorn's counsel as class counsel;

b. Enter judgment in favor of Heckathorn and the Class for all damages and other relief available under the TCPA, 47 U.S.C. § 227(c), including injunctive relief, statutory damages of $500 per violation, and up to $1,500 per violation if Defendants willfully violated the TCPA;

c. Enter a judgment in favor of Heckathorn and the Class that enjoins Defendants from violating the TCPA's provisions and regulations;

d. Enter judgment in favor of Heckathorn and the Class for all applicable pre-judgment and post-judgment interest amounts;

e. Enter judgment in favor of Heckathorn and the Class for all costs; and,

f. Award Heckathorn and the Class such further and other relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Please take notice that Spencer Heckathorn demands a jury trial.

Dated: May 20, 2026

BUTSCH ROBERTS & ASSOCIATES LLC

/s/Christopher E. Roberts
Christopher E. Roberts #61895
David T. Butsch #37539
7777 Bonhomme Avenue, Suite 1300
Clayton, Missouri 63105
Telephone: (314) 863-5700
CRoberts@butschroberts.com

KIMMEL & SILVERMAN, P.C.

Jacob U. Ginsburg (*phv forthcoming*)
30 East Butler Avenue
Ambler, PA 19002
Telephone: (267) 468-5374
jginsburg@creditlaw.com

RICHARDSON RICHARDSON
BOUDREAUX

Colton L. Richardson (*phv* forthcoming)
7447 South Lewis Avenue
Tulsa, Oklahoma 74136
Telephone: (918) 888-8000
colton@rrbok.com

Attorneys for Plaintiff