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14  
15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17 UNITED STATES OF AMERICA,

18 Plaintiff,

19 vs.

20 XCAST LABS, INC.,

21 Defendant.  
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No. 23-cv-03646

**COMPLAINT FOR PERMANENT  
INJUNCTION, CIVIL PENALTIES,  
AND OTHER RELIEF AND  
DEMAND FOR JURY TRIAL**

1 Plaintiff, the United States of America, acting upon notification and  
2 authorization to the Attorney General by the Federal Trade Commission (“FTC”)  
3 pursuant to Section 16(a)(1) of the Federal Trade Commission Act (“FTC Act”), 15  
4 U.S.C. § 56(a)(1), for its Complaint alleges:

5 1. Plaintiff brings this action under Sections 5(m)(1)(A), 13(b), 16(a),  
6 and 19 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. §§ 45  
7 (m)(1)(A), 53(b), 56(a), 57b, and Section 6 of the Telemarketing and Consumer  
8 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. § 6105, to  
9 obtain permanent injunctive relief, civil penalties, and other relief for Defendant’s  
10 acts or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and  
11 the FTC’s Telemarketing Sales Rule (“TSR”), as amended, 16 C.F.R. Pt. 310.

## 12 SUMMARY OF ALLEGATIONS

13 2. This case involves billions of illegal robocalls delivered to American  
14 consumers using services provided by Defendant XCast Labs, Inc. (“XCast”). As  
15 set forth in detail below, XCast has assisted its customers in making telemarketing  
16 calls to consumers that: (1) delivered a prerecorded message, in violation of 16  
17 C.F.R. § 310.4(b)(1)(v); (2) were placed to numbers listed on the National Do Not  
18 Call (DNC) Registry, in violation of 16 C.F.R. § 310.4(b)(1)(iii)(B); (3) failed to  
19 disclose the identity of the seller, in violation of 16 C.F.R. § 310.4(d)(1); (4) falsely  
20 claimed affiliations, including with government entities, in violation of 16 C.F.R. §  
21 310.3(a)(2)(vii); (5) made false or misleading statements to induce purchases or  
22 contributions, in violation of 16 C.F.R. § 310.3(a)(4); and (6) transmitted false or  
23 deceptive caller ID numbers, in violation of 16 C.F.R. § 310.4(a)(8)).

## 24 JURISDICTION AND VENUE

25 3. This Court has subject matter jurisdiction pursuant to 28 U.S.C.  
26 §§ 1331, 1337(a), and 1345.

27 4. Venue is proper in this District under 28 U.S.C. § 1391(b)(1), (b)(2),  
28 (c)(2), (c)(3), and (d), and 15 U.S.C. § 53(b).

1 **DEFENDANT**

2 5. Defendant XCast Labs, Inc. (“XCast”), is a California corporation  
3 with its principal place of business at 1880 Century Park East, Suite 612, Los  
4 Angeles, California. XCast transacts or has transacted business in this District and  
5 throughout the United States.

6 **COMMERCE**

7 6. At all times relevant to this Complaint, Defendant has maintained a  
8 substantial course of trade in or affecting commerce, as “commerce” is defined in  
9 Section 4 of the FTC Act, 15 U.S.C. § 44.

10 **THE TELEMARKETING SALES RULE AND THE NATIONAL DO**  
11 **NOT CALL REGISTRY**

12 7. Congress directed the FTC to prescribe rules prohibiting abusive and  
13 deceptive telemarketing acts or practices pursuant to the Telemarketing Act, 15  
14 U.S.C. §§ 6101–08. The FTC adopted the original TSR in 1995, extensively  
15 amended it in 2003, and amended certain provisions thereafter. 16 C.F.R. Pt. 310.

16 8. Among other things, the 2003 amendments to the TSR established a  
17 do not call registry, maintained by the FTC (the “National DNC Registry” or  
18 “Registry”), of consumers who do not wish to receive certain types of  
19 telemarketing calls. Consumers can register their telephone numbers on the  
20 Registry without charge either through a toll-free telephone call or online at  
21 donotcall.gov.

22 9. Consumers who receive telemarketing calls to their registered  
23 numbers can complain of Registry violations through a toll-free telephone call,  
24 online at donotcall.gov, or by otherwise contacting law enforcement authorities.

25 10. The TSR defines “telemarketing” as a plan, program, or campaign  
26 which is conducted to induce the purchase of goods or services or a charitable  
27 contribution, by use of one or more telephones and which involves more than one  
28 interstate telephone call. 16 C.F.R. § 310.2(gg).

1           11. Under the TSR, a “telemarketer” is any person who, in connection  
2 with telemarketing, initiates or receives telephone calls to or from a customer or  
3 donor. 16 C.F.R. § 310.2(ff).

4           12. A “seller” means any person who, in connection with a telemarketing  
5 transaction, provides, offers to provide, or arranges for others to provide goods or  
6 services to the customer in exchange for consideration. 16 C.F.R. § 310.2(dd).

7           13. The FTC allows sellers, telemarketers, and other permitted  
8 organizations to access the Registry online at [telemarketing.donotcall.gov](http://telemarketing.donotcall.gov), to pay  
9 any required fees, and to download the numbers not to call.

10           14. Under the TSR, an “outbound phone call means a telephone call  
11 initiated by a telemarketer to induce the purchase of goods or services or to solicit  
12 a charitable contribution.” 16 C.F.R. § 310.2(x).

13           15. The TSR prohibits sellers and telemarketers from initiating an  
14 outbound phone call to a number on the Registry, unless the seller or telemarketer  
15 can demonstrate that it has obtained the call recipient’s express written agreement  
16 to receive such calls from it or can demonstrate that it already has an established  
17 business relationship with the call recipient. 16 C.F.R. § 310.4(b)(1)(iii)(B).

18           16. The TSR prohibits initiating an outbound telephone call that delivers a  
19 prerecorded message to induce the purchase of any good or service, unless the  
20 seller or telemarketer has an express written agreement from the recipient to  
21 receive such prerecorded messages from it. 16 C.F.R. § 310.4(b)(1)(v). Calls  
22 delivering prerecorded messages are often referred to as “robocalls.”

23           17. During an outbound telephone call to induce the purchase of goods or  
24 services, the TSR requires a telemarketer to disclose the identity of the seller  
25 truthfully, promptly, and in a clear and conspicuous manner to the person receiving  
26 the call. 16 C.F.R. § 310.4(d)(1).

27           18. The TSR prohibits sellers and telemarketers from misrepresenting,  
28 directly or by implication, in the sale of goods or services, their affiliation with, or

1 endorsement or sponsorship by, any person or government entity. 16 C.F.R. §  
2 310.3(a)(2)(vii).

3 19. The TSR prohibits sellers and telemarketers from making false or  
4 misleading statements to induce any person to pay for goods or services or to  
5 induce a charitable contribution. 16 C.F.R. § 310.3(a)(4).

6 20. The TSR prohibits sellers and telemarketers from causing inaccurate  
7 caller ID information to be transmitted to call recipients. 16 C.F.R. § 310.4(a)(8).  
8 Transmitting inaccurate caller ID information is often referred to as “spoofing.”

9 21. It is a violation of the TSR for any person to provide substantial  
10 assistance or support to any seller or telemarketer when that person knows or  
11 consciously avoids knowing that the seller or telemarketer is engaged in a practice  
12 that violates the TSR.

13 22. Pursuant to Section 3(c) of the Telemarketing Act, 15 U.S.C.  
14 § 6102(c), and Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), a violation  
15 of the TSR constitutes an unfair or deceptive act or practice in or affecting  
16 commerce, in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a).

17 23. Section 3(c) of the Telemarketing Act, 15 U.S.C. § 6102(c), and  
18 Section 18(d)(3) of the FTC Act, 15 U.S.C. § 57a(d)(3), authorize this Court to  
19 award monetary civil penalties of not more than \$50,120.00 for each violation of  
20 the TSR assessed after January 11, 2023, including penalties whose associated  
21 violation predated January 11, 2023.

## 22 **DEFENDANT’S BUSINESS ACTIVITES**

23 24. XCast is a nationwide provider of Voice over Internet Protocol (VoIP)  
24 services, including Session Initiation Protocol (SIP) termination. VoIP is  
25 technology that allows a person to make voice calls using a broadband internet  
26 connection as opposed to a regular (analog) phone line. In other words, VoIP calls  
27 are phone calls that are sent over the internet.

28

1           25. Telemarketers who blast illegal prerecorded calls and other marketing  
2 calls to millions of American consumers typically use VoIP service providers to  
3 transmit those calls. Multiple VoIP providers often participate in transmitting a  
4 given call from its originator (often a telemarketer) to a termination point (most  
5 often a consumer's telephone).

6           26. XCast's VoIP services include "origination" services. Origination is  
7 beginning the transmission of a call from the telemarketer or company which  
8 initiated the call. XCast also serves as a mid-stream provider, transmitting calls  
9 from and to other VoIP providers.

10          27. Since at least January 1, 2018, XCast has, through its VoIP services,  
11 transmitted billions of illegal robocalls that sellers and telemarketers placed to  
12 American consumers in violation of the TSR. Some of these calls marketed goods  
13 and services with a history of deceptive sales practices, such as extended  
14 automobile warranties.

15          28. Many of the illegal robocalls XCast has transmitted were fraudulent  
16 telemarketing scams. They include, for example, robocalls falsely claiming  
17 affiliations with government entities such as the Social Security Administration,  
18 threatening to cut off a call recipient's utility service unless they make immediate  
19 payments, or claiming that a call recipient's credit card has been charged and they  
20 must act promptly to have the charge refunded.

21          29. XCast's own records of the calls it transmits make clear that it has  
22 transmitted huge numbers of illegal calls. XCast's call data records ("CDRs")  
23 include information such as the exact date and time of a call, the calling number,  
24 the called number, and the exact duration of the call. CDRs that XCast has  
25 produced to the FTC of calls it transmitted for just three of its customers, for  
26 example, reveal that nearly two billion of those calls were placed to numbers on  
27 the National DNC Registry.

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1           30. XCast’s CDRs are also rife with massive volumes of very short-  
2 duration calls, which are a distinct feature of fraudulent robocall campaigns. For  
3 example, CDRs XCast produced to the FTC show an average call duration of only  
4 about 6.5 seconds for nearly two billion calls that were placed to numbers on the  
5 National DNC Registry, with the overwhelming majority of those calls lasting less  
6 than ten seconds.

7           31. On scores of occasions dating back to at least December 2018,  
8 USTelecom’s Industry Traceback Group (ITG), the official U.S. Federal  
9 Communications Commission (FCC)-designated consortium of telephone and  
10 broadband industry companies, has notified XCast that XCast routed and  
11 transmitted suspected illegal robocall traffic on behalf of upstream carriers or end-  
12 users.

13           32. ITG notified XCast of these suspected illegal calls through  
14 “Traceback Requests,” which are emails ITG sends to voice service providers  
15 seeking assistance with identifying the source of suspicious traffic that the voice  
16 service provider routed or transmitted.

17           33. An ITG “Traceback” is a network-based process that seeks out the  
18 source of suspicious traffic by beginning at a terminating voice service provider  
19 and systematically tracing a call to preceding providers. ITG finds that suspicious  
20 traffic “is identifiable by a pattern of voice calls that: (1) transit one or more Voice  
21 Service Provider networks and (2) have characteristics associated with abusive,  
22 unlawful, or fraudulent practices.”

23           34. ITG sent XCast over 100 Traceback Requests in 2020 and over 90  
24 more in 2021. For dozens of these Traceback Requests, XCast served as either the  
25 originator of the suspected robocall or the point-of-entry (i.e., the first service  
26 provider within a call’s path to take an illegal robocall from a foreign service  
27 provider).

28

1           35. Many of the Traceback Requests that ITG sent XCast expressly noted  
2 that the calls at issue were perpetrating fraud. The Traceback Requests also  
3 provided additional details about the calls XCast had transmitted. They stated, for  
4 example, that some of the calls impersonated federal officials, threatened to cut off  
5 recipients' utilities, and used corporate names without permission. The Traceback  
6 Requests also noted other problems with the calls XCast had transmitted, including  
7 that they delivered pre-recorded messages, failed to identify the caller or seller, and  
8 were delivered with spoofed caller ID information.

9           36. To help XCast identify the source(s) of the suspected illegal robocall  
10 traffic and take effective steps to mitigate it, some of ITG's Traceback Requests  
11 also provided XCast access to audio of the prerecorded messages and CDRs for  
12 each incident.

13           37. In addition to the scores of Traceback Requests XCast received, law  
14 enforcement also put XCast on notice of numerous red flags relating to its  
15 provision of VoIP services to purveyors of unlawful robocalls. For example, in  
16 August 2019, XCast received a subpoena from federal prosecutors for information  
17 and call records relating to XCast's customer E Sampark, a VoIP provider based in  
18 India that was subsequently indicted for conspiracy to commit wire fraud through a  
19 scheme involving fraudulent robocalls. In January 2021, XCast received a civil  
20 investigative demand ("CID") from the FTC requesting information concerning its  
21 customers Dialcom aka Gudelor (a California based telecommunications provider)  
22 and RSCom Ltd. (a Canadian based telecommunications provider) and informing  
23 XCast that the records were being sought as part of an investigation into potential  
24 violations of the TSR. XCast also received additional subpoenas, CIDs, or other  
25 law enforcement inquiries alerting it to potentially illegal calls, including from  
26 state government agencies who indicated their requests related to potential illegal  
27 telemarketing.

28



1           38. XCast has also repeatedly received complaints from other sources,  
2 including multiple downstream providers, that it was transmitting illegal calls,  
3 including fraudulent scam robocalls and calls with spoofed caller ID information.

4           39. On January 29, 2020, the FTC sent warning letters to XCast and a  
5 select group of other VoIP service providers to caution them that assisting and  
6 facilitating illegal telemarketing or robocalling was against the law and inform  
7 them of lawsuits the FTC and Department of Justice had brought against VoIP  
8 providers for allegedly assisting and facilitating illegal robocalls. Despite this  
9 warning that it could face liability for assisting and facilitating TSR violations,  
10 XCast continued to transmit hundreds of millions of illegal telemarketing calls to  
11 American consumers.

12           40. Even after being alerted to red flags concerning the legality of specific  
13 customers' calls, XCast continued to transmit calls for those customers. For  
14 example, XCast continued transmitting calls for E Sampark for more than a year  
15 after receiving a subpoena from federal prosecutors in August 2019 relating to that  
16 customer, and it continued transmitting calls for its customer RSCom for more than  
17 two years after it began receiving complaints, which was at least as early as March  
18 2019, that calls XCast transmitted for RSCom were illegal.

19           41. XCast's experience as a nationwide provider of VoIP services, the  
20 numerous indicia of unlawful robocall campaigns contained in its own records, and  
21 the repeated warnings and alerts it received from ITG, government officials, and  
22 others demonstrate that since at least January 1, 2018, XCast knew or consciously  
23 avoided knowing that providers were using XCast's services to transmit calls that  
24 violated the TSR.

25           42. Specifically, XCast received direct notice from multiple sources that  
26 its services were transmitting calls that failed to disclose the identity of the seller,  
27 falsely claimed affiliations, including with government entities, made false or  
28 misleading statements to induce purchases, and included spoofed caller ID

1 information. XCast also received direct notice that its services were transmitting  
2 robocalls and calls to numbers on the National DNC Registry. Based on the  
3 massive volumes of such calls, their short duration, and their often fraudulent  
4 nature, it should also have been clear to XCast that it was transmitting robocalls for  
5 which the sellers and telemarketers could not demonstrate, as the TSR requires,  
6 that they had obtained an express agreement from each call's recipient to receive  
7 pre-recorded calls from that seller or telemarketer. These same factors should have  
8 also made clear to XCast that it was transmitting calls to phone numbers on the  
9 National DNC Registry belonging to consumers for whom the seller or  
10 telemarketer could not demonstrate having obtained an express agreement or  
11 having an established business relationship.

12 43. Based on the facts and violations of law alleged in this Complaint,  
13 Plaintiff has reason to believe that Defendant is violating or is about to violate laws  
14 enforced by the Commission.

## 15 **COUNT I**

### 16 **ASSISTING AND FACILITATING VIOLATIONS OF** 17 **THE TELEMARKETING SALES RULE**

18 44. As described in paragraphs 7–43, above, Defendant XCast has, in  
19 numerous instances, provided substantial assistance and support, through the  
20 provision of VoIP services, to one or more “sellers” and/or “telemarketers”  
21 engaged in “telemarketing,” as defined by the TSR, 16 C.F.R. § 310.2, whom  
22 XCast knew or consciously avoided knowing:

- 23 1) Initiated or caused the initiation of outbound calls that delivered  
24 prerecorded messages to induce the purchase of goods or  
25 services, in violation of 16 C.F.R. § 310.4(b)(1)(v);
- 26 2) Initiated or caused the initiation of outbound telephone calls to  
27 telephone numbers on the National DNC Registry to induce the  
28

1 purchase of goods or services, in violation of 16 C.F.R.  
2 § 310.4(b)(1)(iii)(B);

3 3) Failed to disclose the identity of the seller of the goods or  
4 services truthfully, promptly, and in a clear and conspicuous  
5 manner to the person receiving the call, in violation of 16  
6 C.F.R. § 310.4(d)(1);

7 4) Misrepresented, directly or by implication, in the sale of goods  
8 or services, the seller's or telemarketer's affiliation with, or  
9 endorsement or sponsorship by, a person or government entity,  
10 in violation of 16 C.F.R. § 310.3(a)(2)(vii);

11 5) Made false or misleading statements to induce a person to pay  
12 for goods or services or to induce a charitable contribution, in  
13 violation of 16 C.F.R. § 310.3(a)(4); and

14 6) Failed to transmit or cause to be transmitted the accurate  
15 telephone number and name of the telemarketer to any caller  
16 identification service in use by a recipient of a telemarketing  
17 call, in violation of 16 C.F.R. § 310.4(a)(8).

18 45. Defendant's substantial assistance and support violates the TSR, 16  
19 C.F.R. § 310.3(b).

### 20 CONSUMER INJURY

21 46. Consumers are suffering, have suffered, and will continue to suffer  
22 substantial injury as a result of Defendant's violations of the TSR.

23 47. Absent injunctive relief by this Court, Defendant is likely to continue  
24 to injure consumers and harm the public interest.

### 25 THIS COURT'S POWER TO GRANT RELIEF

26 48. Section 13(b) of the FTC Act, 15 U.S.C. § 53(b), empowers this Court  
27 to grant injunctive and other ancillary relief to prevent and remedy any violation of  
28 any provision of law enforced by the FTC.

1           49.    Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. § 45(m)(1)(A), as  
2 modified by Section 4 of the Federal Civil Penalties Inflation Adjustment Act of  
3 1990, 28 U.S. C. § 2461, the Federal Civil Penalties Inflation Adjustment Act of  
4 2015, Public Law 114-74, sec. 701, 129 Stat. 599 (2015), and Section 1.98(d) of  
5 the FTC’s Rule of Practice, 16 C.F.R. § 1.98(d), authorizes this Court to award  
6 monetary civil penalties of not more than \$50,120.00 for each violation of the TSR  
7 assessed after January 11, 2023, including penalties whose associated violation  
8 predated January 11, 2023, that is made with actual knowledge or knowledge fairly  
9 implied on the basis of the objective circumstances that such act is unfair or  
10 deceptive and is prohibited by such rule.

11           50.    Defendant’s violations of the TSR described above were committed  
12 with the knowledge required by Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. §  
13 45(m)(1)(A).

**PRAYER FOR RELIEF**

14           Wherefore, Plaintiff requests that the Court:

- 15           A.    Enter a permanent injunction to prevent future violations of the FTC
- 16           Act and the TSR by Defendant;
- 17           B.    Award Plaintiff monetary civil penalties from Defendant for every
- 18           violation of the TSR; and
- 19           C.    Award any additional relief as the Court determines to be just and
- 20           proper.

**DEMAND FOR JURY TRIAL**

21           Plaintiff hereby demands a trial by jury of all issues so triable pursuant to  
22 Rule 38 of the Federal Rules of Civil Procedure.  
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2 Dated: May 12, 2023

Respectfully submitted,

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