

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

David Bidwell, <i>on behalf of himself and all others similarly situated,</i>	:	Civil Action No.:
	:	
Plaintiff,	:	
v.	:	CLASS ACTION COMPLAINT
Express Scripts, Inc.,	:	
	:	
Defendant.	:	

For this Class Action Complaint, the Plaintiff, David Bidwell, by undersigned counsel, states on behalf of himself and a class of similarly situated persons as follows:

JURISDICTION

1. This action arises out of Defendant Express Scripts, Inc.’s repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (“TCPA”) arising from its practice of placing repeated prerecorded and artificial voice calls to cellular telephone numbers belonging to persons with whom it has no business relationship, and its further practice of continuing to place those calls even after the call recipients advised Defendant that it is calling them in error and asked it to cease the calls.

2. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that the Defendant transacts business in this District and a substantial portion of the acts giving rise to this action occurred in this District.

PARTIES

3. Plaintiff, David Bidwell (“Plaintiff”), is an adult individual residing in Westfield, Massachusetts, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

4. Defendant, Express Scripts, Inc. (“Express Scripts”), is a Delaware business entity with a principal place of business at One Express Way, St. Louis, Missouri 63121, and is a “person” as the term is defined by 47 U.S.C. § 153(39).

FACTUAL ALLEGATIONS APPLICABLE TO PLAINTIFF

5. Plaintiff is not an Express Scripts customer.

6. Nonetheless, within the last four years Express Scripts began calling Plaintiff’s cellular telephone, number 413-xxx-9653.

7. The calls were placed from, *inter alia*, telephone numbers 215-302-4880 & 800-282-2881.

8. Express Scripts repeatedly left voice messages containing prerecorded or artificial voices on Plaintiff’s cellular telephone.

9. The messages Express Scripts left on Plaintiff’s voicemail, contained a robotic-sounding voice stating “Hello, this is Express Scripts, your pharmacy benefits manager, calling for John Ryan [a third party who Plaintiff does not know]. We’re calling with some important information about your prescription benefits. Please call us back toll-free at 1-833-764-0786. . .”

10. Plaintiff never provided his cellular telephone number to Express Scripts and never provided his consent to Express Scripts to be contacted on his cellular telephone for the calls at issue

11. On several separate occasions, including on January 14, 2020 and January 17, 2020, Plaintiff either answered one of Express Scripts’s calls or called Express Scripts back in an effort to cease the calls. During those calls, Plaintiff advised Express Scripts that he was being called in error and that he is not the individual Express sought to reached, and as such, demanded that all calls to him cease.

12. Despite Plaintiff’s requests, the calls persisted.

13. Express Scripts's calls directly interfered with Plaintiff's right to peacefully enjoy a service that Plaintiff paid for and caused Plaintiff a significant amount of anger, anxiety, frustration and annoyance.

CLASS ACTION ALLEGATIONS

A. The Class

14. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all others similarly situated.

15. Plaintiff represents, and is a member of the following class (the "Class"):

All persons within the United States, who received one or more prerecorded or artificial voice calls, from or on behalf of Defendant, to said person's cellular telephone, regarding an unrelated person, after instructing the Defendant to stop calling, within the four years prior to the filing of the Complaint.

16. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Class, but believes the class members number in the several thousands, if not more. Thus, this matter should be certified as a class action to assist in the expeditious litigation of this matter.

B. Numerosity

17. Upon information and belief, Defendant placed prerecorded and artificial voice calls to cellular telephone numbers belonging to thousands of non-customers throughout the United States. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

18. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's records.

C. Common Questions of Law and Fact

19. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These questions include:

- a. Whether Defendant placed prerecorded and artificial voice calls to noncustomers' cellular telephones regarding unrelated individuals;
- b. Whether Defendant can meet its burden of showing it obtained prior express consent to place each call;
- c. Whether Defendant's conduct was knowing and/or willful;
- d. Whether Defendant is liable for damages, and the amount of such damages; and
- e. Whether Defendant should be enjoined from such conduct in the future.

20. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely places prerecorded and artificial voice calls to noncustomers' cellular telephone numbers is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

D. Typicality

21. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

E. Protecting the Interests of the Class Members

22. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue this action.

F. Proceeding Via Class Action is Superior and Advisable

23. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecutions of separate claims against Defendant is small because it is not economically feasible for Class members to bring individual actions.

24. Management of this class action is unlikely to present any difficulties and courts have consistently certified classes in TCPA actions.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.

25. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

26. Plaintiff brings this claim on behalf of himself and the Class.

27. Defendant placed multiple calls using a prerecorded message and/or an artificial voice to cellular telephones belonging to Plaintiff and the other members of the Class without their prior express consent and not for any emergency purpose.

28. Each of the aforementioned calls by Defendant constitutes a violation of the TCPA.

29. Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages for each message sent in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3).

30. Additionally, Plaintiff and the Class are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

31. Further, Plaintiff and the Class are entitled to and seek a declaration from Defendant that:

- Defendant violated the TCPA;
- Defendant used prerecorded messages and/or artificial voices to call noncustomers; and
- Defendant placed calls to Plaintiff and the Classes without prior express consent.

COUNT II
WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.

32. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

33. Plaintiff brings this claim on behalf of himself and the Class.

34. Defendant placed multiple calls using a prerecorded message and/or an artificial voice to cellular numbers belonging to Plaintiff and the other members of the Class without their prior express consent and not for any emergency purposes.

35. Each of the aforementioned calls by Defendant constitutes a willful violation of the TCPA.

36. Plaintiff and the Class are entitled to an award of up to \$1,500.00 in statutory damages for each message sent in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3).

37. Additionally, Plaintiff and the Class are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

38. Further, Plaintiff and the Class are entitled to and seek a declaration from Defendant that:

- Defendant knowingly and/or willfully violated the TCPA;
- Defendant knowingly and/or willfully used prerecorded messages and/or artificial voices to call noncustomers;

- Defendant willfully placed calls to Plaintiff and the Classes without prior express consent; and
- It is Defendant's practice and history to place prerecorded and artificial voice calls to non-customers without their prior express consent.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against Defendants:

- A. Statutory damages pursuant to 47 U.S.C. § 227(b)(3);
- B. Injunctive relief prohibiting such violation of the TCPA by Defendant in the future;
- C. Declaratory relief as prayed for herein; and
- D. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: March 27, 2020

Respectfully submitted,

By /s/ Sergei Lemberg

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Attorneys for Plaintiff

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

David Bidwell, on behalf of himself and all others similarly situated,

(b) County of Residence of First Listed Plaintiff Hampden County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) LEMBERG LAW, L.L.C. 43 Danbury Road, 3rd Floor Wilton, CT 06897(203) 653-2250

DEFENDANTS

Express Scripts, Inc.,

County of Residence of First Listed Defendant State of Missouri (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes sub-sections like PERSONAL INJURY, PERSONAL PROPERTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227, ET SEQ. Brief description of cause: VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT,

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER

DATE 03/27/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Sergei Lemberg

FOR OFFICE USE ONLY RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) Bidwell v. Express Scripts, Inc.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.
II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.
III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES [] NO [x]

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES [] NO [x]

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES [] NO [x]

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES [] NO [x]

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES [x] NO []

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division [] Central Division [] Western Division [x]

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division [] Central Division [] Western Division []

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES [] NO [x]

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Sergei Lemberg, Esq.

ADDRESS Lemberg Law, LLC. 43 Danbury Road, Wilton, Connecticut 06897

TELEPHONE NO. (203) 653-2250

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Express Scripts Hit with Class Action Over Alleged Robocalls](#)
