

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

**JEANNETTE CAMAYD, individually
and on behalf of all others similarly
situated,**

Plaintiff,

v.

CASE NO.:

**UNITED AUTO CREDIT
CORPORATION**

Defendant.
_____ /

**CLASS ACTION
DEMAND FOR JURY TRIAL**

CLASS ACTION COMPLAINT

1. Plaintiff Jeannette Camayd brings this action for damages, and other legal and equitable remedies, resulting from the illegal actions of United Auto Credit Corporation (“UAC”) in contacting Plaintiff on her cellular telephone without her prior express consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

2. “Consumer complaints about abuses of telephone technology— for example, computerized calls to private homes – prompted Congress to pass the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227 *et seq.* Congress determined that federal legislation was needed because telemarketers, by operating interstate, were escaping state-law prohibitions on intrusive nuisance calls.” *Mims v.*

Arrow Fin. Servs., LLC, 132 S. Ct. 740, 744, 181 L.Ed.2d 881 (2012). (internal citations omitted).

3. “Robocalls” are the top consumer complaint in America. In 2016, there were nearly four million complaints reported to the Federal Communication Commission and Federal Trade Commission concerning robocalls.¹ In 2015 and 2014 the robocall complaints reached 2,636,477 and 1,949,603, respectively.² It is important to recognize these numbers account for only the individuals who complained to these agencies. The number of people that have been victimized by robocalling abuse could be close to 100,000,000 in the last 3 years.

4. The TCPA was enacted to prevent companies like UACC from invading American citizens’ privacy and prevent illegal robocalls.

5. Congress enacted the TCPA to prevent real harm. Congress found that "automated or pre-recorded calls are a nuisance and an invasion of privacy, regardless of the type of call" and decided that "banning" such calls made without consent was "the only effective means of protecting telephone consumers from this nuisance and

¹ https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2016/dnc_data_book_fy_2016_post.pdf, <https://opendata.fcc.gov/Consumer-and-Government-Affairs/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e> (3,857,627 complaints to the FCC and FTC regarding robocalls)(last visited September 26, 2017).

² <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2015/dncdatabookfy2015.pdf>; <https://opendata.fcc.gov/Consumer-and-Government-Affairs/Consumer-Complaints-Data-Unwanted-Calls/vakf-fz8e>; https://apps.fcc.gov/edocs_public/attachmatch/DOC-333676A1.pdf, <https://www.ftc.gov/system/files/documents/reports/national-do-not-call-registry-data-book-fiscal-year-2014/dncdatabookfy2014.pdf>

privacy invasion." Pub. L. No. 102-243, §§ 2(10-13) (Dec. 20, 1991), codified at 47 U.S.C. § 227; see also *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012) (“The Act bans certain practices invasive of privacy”).

6. According to findings by the Federal Communication Commission (“FCC”)—the agency Congress vested with authority to issue regulations implementing the TCPA—such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.

7. UAC has caused consumers actual harm, not only because consumers were subjected to the aggravation that necessarily accompanies these calls, but also because consumers frequently have to pay their cell phone service providers for the receipt of such calls and such calls are an intrusion upon seclusion, diminish cellular battery life, and waste data storage capacity.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this class action lawsuit under 28 U.S.C. §1331 and 47 U.S.C. §227. Venue in this District is proper because UAC maintains conducts business within this District and Plaintiff received the unlawful robocalls from UAC within this District.

PARTIES

9. Plaintiff, Jeannette Camayd is a natural person, and citizen of the State of Florida, residing in Miami, Florida.

10. Defendant, UAC, is a California based non-prime automotive lender conducting business across the country. UAC will be served through its registered agent for service of process.

THE TELEPHONE CONSUMER PROTECTION ACT

11. In 1991, Congress enacted the Telephone Consumer Protection Act, 47 U.S.C. §227 (TCPA), in response to a growing number of consumer complaints regarding certain telemarketing practices.

12. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers.” Specifically, the plain language of §227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

13. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also

recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.

14. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the “prior express consent” of the called party.

15. The TCPA prohibits the use of any “automatic telephone dialing systems” (“ATDS”) to call cellular telephones. It also prohibits the use of artificial or prerecorded messages.

16. ATDS means any equipment that has the “capacity to dial numbers without human intervention.” *Griffith v. Consumer Portfolio Serv., Inc.*, 2011 WL 3609012 (N.D.Ill. Aug. 16, 2011) (emphasis original).

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF

17. Plaintiff’s cellular telephone number at all relevant times was XXX-XXX-0323 and was assigned to a cellular telephone service as specified in 47 U.S.C. §227(b)(1)(A)(iii).

18. At all times relevant to this complaint, Plaintiff was and is a “person” as defined by the TCPA 47 U.S.C. §153(39).

19. Plaintiff never applied for credit with UAC, does not have an account with UAC and never provided UAC consent to use its automatic dialing equipment to call her.

20. Yet, beginning in or around October, 2016, UAC began repeatedly calling Plaintiff on her cellular telephone in an attempt to reach her father, Emilio Camayd for whom, Plaintiff was apparently listed as a credit reference on the loan application.

21. UAC was not calling Plaintiff as a credit reference, but instead calling to collect a debt for payments it alleged were past due.

22. Plaintiff repeatedly told UAC to stop calling her, but the calls continued.

23. Plaintiff did not provide her cellular telephone number to UAC, nor did she provide authorization for UAC to contact her to collect purported debts of Emilio Camayd.

24. UAC continued to place calls to Plaintiff's cellular telephone number using an ATDS.

25. Defendant placed calls to Plaintiff's cellular telephone on at least five occasions in October 2016.

26. It is UAC's business practice to call the telephone numbers of references in attempts to collect debts even though it has no consent to place such calls.

27. UAC knew that it did not have authorization to call Plaintiff on Plaintiff's cellular telephone number using an ATDS since she was only listed as a reference for Emilio Camayd and Plaintiff instructed UAC to stop calling her.

28. When Plaintiff answered the calls from UAC, she heard a pause and a click prior to a live operator joining the line, which is indicia of an ATDS.

29. None of the calls that UAC placed to Plaintiff's cellular telephone number constituted emergency calls as defined by the TCPA.

CLASS ACTION ALLEGATIONS

30. This action is brought on behalf of the following Class and Sub-Class:

The Class:

(1) All persons in the United States (2) to whose cellular telephone number (3) UAC placed a non-emergency telephone call (4) using an automatic telephone dialing system or an artificial or prerecorded voice (5) within 4 years of the complaint (6) where UAC did not have express consent to call said cellular telephone number.

The "reference" Sub-Class:

(1) All persons in the United States who were listed as a reference (2) to whose cellular telephone number (3) UAC placed a non-emergency telephone call (4) using an automatic telephone dialing system or an artificial or prerecorded voice (5) within 4 years of the complaint (6) to call said cellular telephone number.

31. Excluded from the Class are Defendant, its legal representatives, assigns, and successors, and any entity in which the Defendant has a controlling interest. Also excluded from the Class is the Judge to whom this case is assigned, the Judge's

immediate family, and Plaintiff's counsel and their employees. Plaintiff reserves the right to amend the above-stated class definition based upon facts learned in discovery.

32. Plaintiff alleges on information and belief based upon the Defendant's use of telephone dialing systems that the Class and Sub-Class are so numerous that joinder of all members is impracticable. There are more than forty (40) individuals in the Class and Sub-Class as previously defined herein.

33. There are questions of law or fact common to the Class and Sub-Class, which common issues predominate over any issues involving only individual class members. Factual and/or legal issues common to each class member include:

- a. Whether Defendant's conduct is governed by the TCPA?
- b. Whether the telephone calls made by Defendant were placed using an ATDS?
- c. Are the class members entitled to treble damages based upon the willfulness of Defendant's conduct?
- d. Whether Defendant should be enjoined from engaging in such conduct in the future?

34. Plaintiff's claim is typical of those of the members of the Class and Sub-Class. Within the Class and Sub-Class, all claims are based on the same facts and legal theories.

35. Plaintiff will fairly and adequately protect the interests of the Class and Sub-Class. She has retained counsel experienced in handling actions involving unlawful practices under the TCPA and class actions. Neither Plaintiff nor her counsel has any interest that might cause them not to vigorously pursue this action.

36. Certification of each Class under Rule 23(b)(3) of the Federal Rules of Civil Procedure is also appropriate in that:

- a. The questions of law or fact common to the members of the Class and Sub-Class predominate over any questions affecting individual members.
- b. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

37. Certification of the Class under Rule 23(b)(2) of the Federal Rules of Civil Procedure is also appropriate in that Defendant has acted on grounds generally applicable to the Class and Sub-Class, thereby making final injunctive relief appropriate with respect to the Class and Sub-Class as a whole.

38. Plaintiff requests that the Class and Sub-Class be certified under Rule 23(b)(3) for monetary damages, and pursuant to Rule 23(b)(2) for injunctive relief.

COUNT I: NEGLIGENT VIOLATIONS OF THE TCPA

39. Plaintiff incorporates the above factual allegations.

40. Defendant placed non-emergency telephone calls to Plaintiff and the members of the Class and Sub-Class using an automatic telephone dialing system or device that has the capacity to store or produce telephone numbers to be called using a random or sequential number generator.

41. The calls were made without the prior express consent of the parties.

42. The aforesaid calls violate the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

43. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and in favor of the Class and Sub-Class, and against Defendant UAC for:

- a. An order certifying this case to proceed as a class action;
- b. Statutory damages of \$500 dollars per call for negligent violations of the TCPA;
- c. An injunction requiring Defendant to cease all communications in violation of the TCPA; and
- d. Such further relief as this Court may deem appropriate.

COUNT II: WILLFUL VIOLATION OF THE TCPA

44. Plaintiff incorporates the above factual allegations.

45. Defendant placed non-emergency telephone calls to Plaintiff and the members of the Class and Sub-Class using an automatic telephone dialing system or device which has the capacity to store or produce telephone numbers to be called using a random or sequential number generator.

46. The excessive calls were made without the prior express consent of the parties.

47. The aforesaid calls violate the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

48. WHEREFORE, Plaintiff requests that the Court enter judgment in her favor and in favor of the Class and Sub-Class, and against Defendant UAC for:

- a. An order certifying this case to proceed as a class action;
- b. Statutory damages of up to \$1,500 dollars per call for each willful violation of the TCPA;
- c. An injunction requiring Defendant to cease all communications in violation of the TCPA; and
- d. Such further relief as this Court may deem appropriate.

JURY DEMAND

Plaintiff demands trial by jury.

Respectfully submitted,

/s/ Max Story

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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 JEANNETTE CAMAYD

DEFENDANTS UNITED AUTO CREDIT CORPORATION

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

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

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Max Story PA, 328 2nd Ave. N. Jax Bch FL 32250 Keogh Law, Ltd., 55 W Monroe St, St 3390, Chicago IL 60603

Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

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)

- PTF DEF
Citizen of This State [] 1 [] 1
Citizen of Another State [] 2 [] 2
Citizen or Subject of a Foreign Country [] 3 [] 3
Incorporated or Principal Place of Business In This State [] 4 [] 4
Incorporated and Principal Place of Business In Another State [] 5 [] 5
Foreign Nation [] 6 [] 6

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

- [] 110 Insurance
[] 120 Marine
[] 130 Miller Act
[] 140 Negotiable Instrument
[] 150 Recovery of Overpayment & Enforcement of Judgment
[] 151 Medicare Act
[] 152 Recovery of Defaulted Student Loans (Excl. Veterans)
[] 153 Recovery of Overpayment of Veteran's Benefits
[] 160 Stockholders' Suits
[] 190 Other Contract
[] 195 Contract Product Liability
[] 196 Franchise
PERSONAL INJURY
[] 310 Airplane
[] 315 Airplane Product Liability
[] 320 Assault, Libel & Slander
[] 330 Federal Employers' Liability
[] 340 Marine
[] 345 Marine Product Liability
[] 350 Motor Vehicle
[] 355 Motor Vehicle Product Liability
[] 360 Other Personal Injury
[] 362 Personal Injury - Med. Malpractice
PERSONAL INJURY
[] 365 Personal Injury - Product Liability
[] 367 Health Care/Pharmaceutical Personal Injury Product Liability
[] 368 Asbestos Personal Injury Product Liability
PERSONAL PROPERTY
[] 370 Other Fraud
[] 371 Truth in Lending
[] 380 Other Personal Property Damage
[] 385 Property Damage Product Liability
HABES CORPUS:
[] 463 Alien Detainee
[] 510 Motions to Vacate Sentence
Other:
[] 530 General
[] 535 Death Penalty
[] 540 Mandamus & Other
[] 550 Civil Rights
[] 555 Prison Condition
[] 560 Civil Detainee - Conditions of Confinement
[] 625 Drug Related Seizure of Property 21 USC 881
[] 690 Other
[] 422 Appeal 28 USC 158
[] 423 Withdrawal 28 USC 157
[] 820 Copyrights
[] 830 Patent
[] 835 Patent - Abbreviated New Drug Application
[] 840 Trademark
[] 861 HIA (1395ff)
[] 862 Black Lung (923)
[] 863 DIWC/DIWW (405(g))
[] 864 SSID Title XVI
[] 865 RSI (405(g))
[] 422 Appeal 28 USC 158
[] 423 Withdrawal 28 USC 157
[] 375 False Claims Act
[] 376 Qui Tam (31 USC 3729 (a))
[] 400 State Reapportionment
[] 410 Antitrust
[] 430 Banks and Banking
[] 450 Commerce
[] 460 Deportation
[] 470 Racketeer Influenced and Corrupt Organizations
[] 480 Consumer Credit
[] 490 Cable/Sat TV
[] 850 Securities/Commodities/Exchange
[] 890 Other Statutory Actions
[] 891 Agricultural Acts
[] 893 Environmental Matters
[] 895 Freedom of Information Act
[] 896 Arbitration
[] 899 Administrative Procedure Act/Review or Appeal of Agency Decision
[] 950 Constitutionality of State Statutes
[] 210 Land Condemnation
[] 220 Foreclosure
[] 230 Rent Lease & Ejectment
[] 240 Torts to Land
[] 245 Tort Product Liability
[] 290 All Other Real Property
[] 440 Other Civil Rights
[] 441 Voting
[] 442 Employment
[] 443 Housing/Accommodations
[] 445 Amer. w/Disabilities - Employment
[] 446 Amer. w/Disabilities - Other
[] 448 Education
[] 462 Naturalization Application
[] 465 Other Immigration Actions
[] 870 Taxes (U.S. Plaintiff or Defendant)
[] 871 IRS-Third Party 26 USC 7609
[] 710 Fair Labor Standards Act
[] 720 Labor/Mgmt. Relations
[] 740 Railway Labor Act
[] 751 Family and Medical Leave Act
[] 790 Other Labor Litigation
[] 791 Empl. Ret. Inc. Security Act

V. ORIGIN

- [X] 1 Original Proceeding
[] 2 Removed from State Court
[] 3 Re-filed (See VI below)
[] 4 Reinstated or Reopened
[] 5 Transferred from another district (specify)
[] 6 Multidistrict Litigation Transfer
[] 7 Appeal to District Judge from Magistrate Judgment
[] 8 Multidistrict Litigation - Direct File
[] 9 Remanded from Appellate Court

VI. RELATED/RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [] NO b) Related Cases [] YES [] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): TELEPHONE CONSUMER PROTECTION ACT 47 USC 227

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

[X] CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE December 15, 2017 SIGNATURE OF ATTORNEY OF RECORD

Civil Action No. 1:17-cv-24536-XXXX

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Alleged Robocalls Catch Up to United Auto Credit Corporation in Class Action Case](#)
