

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

| | | |
|--|---|-------------------------------|
| JENNIFER GAJEWSKI, Individually and on Behalf of All Others Similarly Situated, |) | Case No.: 17-cv-601 |
| |) | |
| Plaintiff, |) | CLASS ACTION COMPLAINT |
| v. |) | |
| |) | |
| CAPITAL ONE BANK (USA), N.A., |) | Jury Trial Demanded |
| |) | |
| Defendant. |) | |

Plaintiff Jennifer Gajewski (hereinafter referred to as “Plaintiff”), individually and on behalf of all others similarly situated, alleges on personal knowledge, investigation of her counsel, and on information and belief as follows:

NATURE OF ACTION

1. Plaintiff brings this action for damages, and other legal and equitable remedies, resulting from the illegal actions of Defendant in negligently, knowingly and/or willfully placing telephone calls to Plaintiff’s and Class members’ cellular telephones without their prior express written consent within the meaning of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (hereinafter referred to as the “TCPA”).
2. Defendant has violated the TCPA by contacting Plaintiff and Class members on their cellular telephones via an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), without their prior express consent within the meaning of the TCPA.
3. Defendant has also violated the Wisconsin Consumer Act (“WCA”) by contacting Plaintiff and Class members at their places of employment without consent.
4. Plaintiff brings this action for actual damages, injunctive relief and statutory damages resulting from Defendant’s illegal actions.

JURISDICTION AND VENUE

5. The court has jurisdiction to grant the relief sought by the Plaintiff pursuant to 28 U.S.C. § 1331; 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 753 (2012) (holding that federal courts have federal question jurisdiction over TCPA claims.). The court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.

6. This Court has personal jurisdiction over Defendant because the conduct at issue occurred in or was directed toward individuals in the state of Wisconsin. Plaintiff received automated telephone calls to her cellular telephone from Defendant after Plaintiff had revoked her consent for such calls. Defendant made automated telephone calls to cellular telephones, including Plaintiff's, that are assigned a Wisconsin-based telephone number. Defendant has established minimum contacts showing it has purposefully availed itself to the resources and protection of the State of Wisconsin. Defendant does substantial business in Wisconsin.

7. Venue is proper in the United States District Court for the Eastern District of Wisconsin pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1441(a), because a substantial part of the events giving rise to the claims, namely automated telephone calls/text messages to persons in this District and debt collection activities, occurred in this District.

PARTIES

8. Plaintiff Jennifer Gajewski ("Gajewski") is an individual citizen of the State of Wisconsin, who resides in Oak Creek, Wisconsin.

9. Plaintiff is a "customer" as defined in the Wisconsin Consumer Act, Wis. Stat. § 421.301(17), in that she engaged in consumer credit transactions. Wis. Stat. § 421.301(10).

10. Defendant Capital One Bank (USA), N.A. ("Capital One") is a national bank with its primary place of business at 1680 Capital One Drive, McLean, Virginia 22102-3491.

11. Capital One is engaged in the business of collecting debts owed to itself and others that were incurred for personal, family or household purposes.

12. The alleged debt that Capital One was attempting to collect from Plaintiff arose from alleged purchases on two of Plaintiff's personal credit card accounts: a Capital One credit card account ending in 4589 (the "Capital One Account") and a "Justice" branded credit card account ending in 8438 (the "Justice Account"). Capital One owns and services Justice-branded credit card accounts. See <https://justice.capitalonecards.com/#/apply>.

**THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
(TCPA), 47 U.S.C. § 227**

13. In 1991, Congress enacted the TCPA, in response to a growing number of consumer complaints regarding certain telemarketing practices.

14. The TCPA regulates, among other things, the use of automated telephone equipment, or "autodialers." Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call, including sending a text message, to a wireless number in the absence of an emergency or the prior express written consent of the called party.

15. According to findings by the 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 and texts whether they pay in advance or after the minutes are used.

16. The FCC has ruled that the word "call" in the TCPA includes both voice calls and text calls, and applies whether the text messages were sent by regular telephone transmission or

over the internet to a wireless device. “TCPA Omnibus Declaratory Ruling and Order,” FCC 15-72 at 56-62 (July 10, 2015), (available at “<https://www.fcc.gov/document/tcpa-omnibus-declaratory-ruling-and-order>.”) (Reaffirming the FCC’s 2003 ruling that text messages are “calls” under the TCPA and further ruling that text messages sent “internet to phone” and by other sources are also “calls.”)

17. The TCPA "generally prohibits autodialed calls to wireless phones," but "provides an exception for autodialed and prerecorded message calls...made with the prior express consent of the called party." *Balschmiter v. TD Auto Fin. LLC*, 303 F.R.D. 508, 512 (E.D. Wis. 2014) citing *In Re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C. Rcd. 559 ¶ 9 (Jan. 4, 2008); 47 U.S.C. § 227(b)(1)(A)(iii).

18. On February 15, 2012, the FCC released a Declaratory Ruling wherein it clarified that a party must obtain *prior express written consent* from the recipient prior to making automated calls to the recipient’s cellular telephone. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (“2012 FCC Declaratory Ruling”), 27 F.C.C.R. 1830, 27 FCC Rcd. 1830, 55 Communications Reg. (P&F) 356, 2012 WL 507959 (Feb, 15, 2012), at ¶ 2.

19. The FCC recently updated its rules on consent, requiring “prior express written consent” for calls or SMS text messages that contain an “advertisement” or “telemarketing.” *See* 47 C.F.R. § 64.1200(f)(8).

20. In the same omnibus order, the FCC clarified “that a called party may revoke consent at any time and through any reasonable means. A caller may not limit the manner in which revocation may occur.” TCPA Omnibus Declaratory Ruling and Order,” FCC 15-72 at 29-30.

21. The Court is bound by all of the FCC's final orders relating to the TCPA. *Balschmitter v. TD Auto Fin. LLC*, 303 F.R.D. 508, footnote 4 (E.D. Wis. 2014) citing *CE Design, Ltd. v. Prism Bus. Media, Inc.*, 606 F.3d 443, 446 (7th Cir. 2010) (holding that under the Hobbs Act, the FCC's TCPA orders are binding); *Media, Inc.*, 606 F.3d 443, 446 (7th Cir. 2010) (holding that under the Hobbs Act, the FCC's TCPA orders are binding).

THE WISCONSIN CONSUMER ACT

CH. 421-427, WIS. STATS.

22. The Wisconsin Consumer Act (“WCA”) was enacted to protect consumers against unfair, deceptive, and unconscionable business practices and to encourage development of fair and economically sound practices in consumer transactions. Wis. Stat. § 421.102(2). The Wisconsin Supreme Court has favorably cited authority finding that the WCA “goes further to protect consumer interests than any other such legislation in the country,” and is “probably the most sweeping consumer credit legislation yet enacted in any state.”

23. To further these goals, the Act’s protections must be “liberally construed and applied.” Wis. Stat. § 421.102(1); see also § 425.301. “The basic purpose of the remedies set forth in Chapter 425, Stats., is to induce compliance with the WCA and thereby promote its underlying objectives.” *First Wisconsin Nat’l Bank v. Nicolaou*, 113 Wis. 2d 524, 533, 335 N.W.2d 390 (1983). Thus, private actions under the WCA are designed to both benefit consumers whose rights have been violated and also competitors of the violators, whose competitive advantage should not be diminished because of their compliance with the law.

24. To carry out this intent, the WCA provides Wisconsin consumers with an array of protections and legal remedies.

25. The Act contains significant and sweeping restrictions on the activities of those attempting to collect debts. See Wis. Stats. § 427.104.

26. The Act also provides injured consumers with causes of action for statutory and actual damages and injunctive remedies against defendants on behalf of all customers who suffer similar injuries. See Wis. Stats. §§ 426.110(1); § 426.110(4)(e).

27. Finally, “a customer may not waive or agree to forego rights or benefits under [the Act].” Wis. Stat. § 421.106(1).

28. Consumers’ WCA claims under Wis. Stat. § 427.104(1)(L) are analyzed using the same methods as claims under the FDCPA. While the Seventh Circuit has not squarely interpreted how WCA cases based upon the content of debt collection letters should be determined, federal courts in this District and the state courts in Wisconsin generally look to FDCPA case law for guidance. Indeed, the WCA itself requires that the court analyze the WCA “in accordance with the policies underlying a federal consumer credit protection act,” including the FDCPA. Wis. Stat. § 421.102(1).

29. Further, the Wisconsin Supreme Court has held that WCA claims relating to debt collection are to be analyzed under the “unsophisticated consumer” standard. *Brunton v. Nuwell Credit Corp.*, 785 N.W.2d 302, 314-15. In *Brunton*, the Wisconsin Supreme Court explicitly adopted and followed the “unsophisticated consumer” standard, citing and discussing *Gammon v. GC Servs. Ltd. P’ship*, 27 F.3d 1254, 1257 (7th Cir. 1994). *Id.*

30. Unlike the FDCPA, the WCA’s debt collection provisions apply to original creditors who are attempting to collect their own debts. Wis. Stat. § 427.103(3) (“Debt collector’ means any person engaging, directly or indirectly, in debt collection, and includes any person who sells, or offers to sell, forms represented to be a collection system, device or scheme,

intended or calculated to be used to collect claims. The term does not include a printing company engaging in the printing and sale of forms.”).

31. Original creditors, including Capital One, are debt collectors under the WCA. Wis. Stat. § 427.103; *Hartman v. Meridian Fin. Servs.*, 191 F. Supp. 2d 1031, 1048 (W.D. Wis. 2002) (“Unlike the [Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq.], the Wisconsin Consumer Act does not provide exceptions to its general definition of a debt collector.”).

32. The WCA also requires an award of reasonable attorney fees and costs to a prevailing plaintiff. Wis. Stat. § 425.308.

FACTUAL ALLEGATIONS

33. At all times relevant, Gajewski is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

34. At all times relevant, Gajewski is, and at all times mentioned herein was, a “customer” as defined by Wis. Stat. § 421.301(17).

35. Gajewski originally provided her cellular telephone number, ending in 4933, to Capital One.

36. After Gajewski was unable to make payments on her Capital One and Justice Accounts, Capital One began calling Gajewski’s cellular telephone repeatedly.

37. On February 23, 2017, Gajewski sent two letters by U.S. mail to Capital One. In the letters, Gajewski revoked consent to call Gajewski’s cellular phone. A copy of the letter regarding the Capital One Account is attached as Exhibit A. A copy of the letter regarding the Justice Account is attached as Exhibit B.

38. On or around March 8, 2017, Plaintiff received a letter from Capital One. A copy of this letter is attached as Exhibit C.

39. Exhibit C is dated March 6, 2017, and states:

Re: Account Ending in xxxxxxxxxxxx4589

Case #: [REDACTED] 1773

Dear Jennifer Gajewski,

Thanks for contacting us about your Capital One credit card account issued by Capital One®.

We would be happy to research your request, but we need your account number to do so. We are unable to locate the number based on the information you sent us. To process your request, we need your name, address on file with Capital One, your current address (if different from what we have on file, please indicate if you would like us to change the address), account number, Social Security Number, date of birth, and the case ID that appears at the top of this letter.

If you have any questions, please give us a call at 800-216-1013. Our customer service representatives will be happy to help you.

40. Upon information and belief, Exhibit C, the statement about “contacting us” (i.e. Capital One) refers to Exhibit A.

41. Capital One thus acknowledged receipt of Gajewski’s revocation of consent to call her cellular phone.

42. In Exhibit C, Capital One states that it is “unable to locate the [account] number based on the information you sent us.” This statement is nonsensical. The partial account number for the Capital One Account and Gajewski’s name and address are printed on Exhibit C.

43. Capital One placed several additional telephone calls to Gajewski’s cellular telephone after Capital One acknowledged receiving Exhibit A:

- a. April 2, 2017, 5:38 p.m.
- b. April 1, 2017, 3:47 p.m. and 9:12 a.m.
- c. March 30, 2017, 5:01 p.m.
- d. March 28, 2017, 6:39 p.m.
- e. March 14, 2017, 8:39 a.m.
- f. March 12, 2017, 2:32 p.m.

- g. March 11, 2017, 1:05 p.m.
- h. March 10, 2017, 11:56 a.m.
- i. March 9, 2017, 10:34 a.m.
- j. March 8, 2017, 3:49 p.m.
- k. March 7, 2017, 5:21 p.m.
- l. March 6, 2017, 2:33 p.m.
- m. March 5, 2017, 11:17 a.m.
- n. March 4, 2017, 3:25 p.m. and 9:24 a.m.
- o. March 2, 2017, 5:27 p.m.

44. The call history on Gajewski's cellular phone indicates that all of the calls listed above were made from the numbers 800-955-6000 and 866-953-7906. These telephone numbers belong to Capital One.

45. Upon information and belief, Capital One's records will show the date that Capital One actually received Exhibits A and B.

46. Capital One is, and at all times mentioned herein was, a "person", as defined by 47 U.S.C. § 153(39) ("The term 'person' includes an individual, partnership, association, joint-stock company, trust, or corporation.").

47. All telephone contact by Capital One to Gajewski on her cellular telephone occurred via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1).

48. Capital One maintains contact center software which connects to its telephony hardware that together constitutes a dialing system with the capacity to make telephone calls without human intervention; thus, it is an automatic telephone dialing system (ATDS).

49. The telephone calls to Gajewski's cellular telephone number, and to the class, were initiated using Capital One's contact center software.

50. Capital One's contact center software and dialing system has the capacity to dial from a database of stored telephone numbers either at random or in a sequence, either pre-set or determined by algorithm.

51. Upon information and belief, Capital One placed all of the calls to Gajewski and class members using its contact center software and dialing system, dialing from a database of stored telephone numbers either at random or in a sequence, either pre-set or determined by algorithm.

52. Capital One's contact center software and dialing system has the capacity to dial from a list of stored telephone numbers without human intervention.

53. Upon information and belief, Capital One placed all of the calls to Gajewski and class members using its contact center software and dialing system, dialing from a list of stored telephone numbers without human intervention.

54. All of the calls that Capital One initiated to Gajewski's cellular telephone number, and to the class, were initiated using software which has the capacity to predicatively dial.

55. Upon information and belief, and in light of the frequency, large number, nature, and character of the calls, Capital One placed its calls to Gajewski's and class members' cellular telephone numbers by using (a) an automated dialing system that uses a complex set of algorithms to automatically dial consumers' telephone numbers in a manner that "predicts" the time when a consumer will answer the phone and a person will be available to take the call, or (b) equipment that dials numbers and, when certain computer software is attached, also assists persons in predicting when a sales agent will be available to take calls, or (c) hardware, that

when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers, or (d) hardware, software, or equipment that the FCC characterizes as a predictive dialer through the following, and any related, reports and orders, and declaratory rulings: *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 17 FCC Rcd 17459, 17474 (September 18, 2002); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14092-93 (July 3, 2003); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559, 566 (Jan. 4, 2008); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, FCC 15-72 (adopted June 18, 2015 and released July 10, 2015).

56. The telephone number that Capital One used to contact Gajewski, made by an “automatic telephone dialing system,” was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

57. On February 23, 2017, Gajewski revoked any “prior express consent” given to Capital One to place telephone calls or text messages to Gajewski’s cellular phone utilizing an “artificial or prerecorded voice” or placed by an “automatic telephone dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A). Capital One acknowledged the revocation on March 6, 2017.

58. Capital One’s telephone calls/texts to Gajewski’s cellular phone were not “for emergency purposes” as described in 47 U.S.C. § 227(b)(1)(A).

59. Capital One's calls and voicemails were sent to Gajewski's cellular phone utilizing an "automatic telephone dialing system" for non-emergency purposes and in the absence of Gajewski's prior express consent violated 47 U.S.C. § 227(b)(1)(A).

60. Under the TCPA, the burden is on Defendants to demonstrate that Capital One currently had prior express consent within the meaning of the statute.

61. The Seventh Circuit has held that the "'called party' in § 227(b)(1) means the person subscribing to the called number at the time the call is made." *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012); *see also Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1251-52 (11th Cir. 2014) ("called party" means the current subscriber and not the prior subscriber or intended recipient for purposes of the TCPA).

62. Capital One also contacted Gajewski on her work telephone during business hours many times, after Gajewski told Capital One that Gajewski was not permitted to receive personal phone calls on her work phone.

63. On the phone calls to Gajewski, Capital One representatives attempted to collect the alleged debt from Gajewski.

64. The phone calls were not "solely to verify employment status or earnings," and Gajewski's employer did not have "an established debt counseling service or procedure." The calls were attempts to collect the alleged debt.

65. Capital One continued to call Gajewski at work to attempt to put undue pressure on Gajewski to pay the alleged debt to Capital One. Such conduct is inherently unfair, as the consumer is placed at risk for workplace discipline, up to termination, for repeated personal calls to the employer.

COUNT I

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227 *ET SEQ.*

66. Gajewski incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

67. The foregoing acts and omissions of Capital One constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

68. In 2014, Capital One settled a TCPA class action with similar allegations for over \$75 million. <https://www.capitalonetcpaclasssettlement.com/>.

69. As a result of Capital One' knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Gajewski and each member of the Class are entitled to treble damages of up to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

70. Gajewski and all Class members are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA and WCA by Capital One in the future. Gajewski and Class members are also entitled to an award of attorneys' fees and costs.

COUNT II

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

71. Gajewski incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

72. The foregoing acts and omissions of Capital One constitute numerous and multiple violations of the TCPA, including but not limited to each of the above cited provisions of 47 U.S.C. § 227 *et seq.*

73. As a result of Capital One' violations of 47 U.S.C. § 227 *et seq.*, Gajewski and Class members are entitled to an award of \$500.00 in statutory damages for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

74. Gajewski and Class members are also entitled to and do seek injunctive relief prohibiting Capital One' violation of the TCPA in the future.

75. Gajewski and Class members are also entitled to an award of attorneys' fees and costs.

COUNT III -- WCA

76. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

77. Capital One continually contacted Gajewski at her workplace on her work telephone many times, even after Gajewski told Capital One that Gajewski was not permitted to receive personal phone calls on her work phone.

78. On the phone calls to Gajewski, Capital One representatives attempted to collect the alleged debt from Gajewski.

79. The phone calls were not "solely to verify employment status or earnings," and Gajewski's employer did not have "an established debt counseling service or procedure." The calls were attempts to collect the alleged debt.

80. Capital One continued to call Gajewski at work to attempt to put undue pressure on Gajewski to pay the alleged debt to Capital One. Such conduct is inherently unfair, as the consumer is placed at risk for workplace discipline, up to termination, for repeated personal calls to the employer.

81. Capital One violated Wis. Stat. §§ 427.104(1)(d) and 427.104(1)(h).

CLASS ACTION ALLEGATIONS

82. Plaintiff brings this action on behalf of herself and on behalf of all other persons similarly situated.

83. Plaintiff defines a class, consisting of:

All persons within the United States who, between July 1, 2014 and April 27, 2017, received a non-emergency text message from or on behalf of Capital One to a cellular telephone through the use of an automatic telephone dialing system or an artificial or prerecorded voice, and after Capital One received written correspondence from the person, including electronic means of correspondence, revoking consent to contact the person's cellular phone.

Plaintiff Gajewski represents, and is a member of, the Class. Excluded from the Class is Defendant Capital One and any entities in which Capital One or its parent company has a controlling interest; Capital One's agents and employees; any Judge to whom this action is assigned and any member of such Judge's staff and immediate family.

84. Gajewski does not know the exact number of members in the Class, but Gajewski reasonably believes that Class members number at minimum in the hundreds, if not thousands.

85. Gajewski and all members of the Class have been harmed by the acts of Capital One.

86. This Class Action Complaint seeks injunctive relief and money damages.

87. The joinder of all Class members is impracticable due to the size and relatively modest value of each individual claim. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. The Class can be identified easily through records maintained by Capital One and/or its agents.

88. There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact involving the class claims predominate over questions

which may affect individual Class members. Those common questions of law and fact include, but are not limited to, the following:

- a. Whether Capital One and/or its agents made non-emergency calls/texts to Gajewski's and Class members' cellular telephones using an automatic telephone dialing system and/or an artificial or prerecorded voice;
- b. Whether Capital One can meet its burden of showing it obtained prior express consent (*i.e.*, consent that is clearly and unmistakably stated), to make such calls and that consent was not revoked in writing;
- c. Whether Capital One's conduct was knowing and/or willful;
- d. Whether Capital One is liable for damages, and the amount of such damages; and
- e. Whether Capital One should be enjoined from engaging in such conduct in the future.

89. Gajewski asserts claims that are typical of each Class member. Gajewski will fairly and adequately represent and protect the interests of the Class, and has no interests which are antagonistic to any member of the Class.

90. Gajewski has retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes, including claims under the TCPA.

91. A class action is the superior method for the fair and efficient adjudication of this controversy. Class-wide relief is essential to compel Defendant to comply with the TCPA. The interest of Class members in individually controlling the prosecution of separate claims against Capital One is small because the statutory damages in an individual action for violation of the TCPA are small. Management of these claims is likely to present significantly fewer difficulties

than are presented in many class claims because the calls at issue are all automated and the Class members, by definition, did not provide the prior express consent required under the statute to authorize calls to their cellular telephones.

92. Capital One has acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and belief, Gajewski alleges that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

JURY DEMAND

93. Gajewski hereby demands a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all Class members the following relief against Defendant:

A. Injunctive relief prohibiting such violations of the TCPA and WCA by Defendant in the future;

B. As a result of Defendant's willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff Gajewski seeks for herself and each Class member treble damages, as provided by statute, of up to \$1,500.00 for each and every call that violated the TCPA;

C. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1), Plaintiff Gajewski seeks for herself and each Class member \$500.00 in statutory damages for each and every call that violated the TCPA;

D. As a result of Defendant's violations of Wis. Stat. §§ 427.104(1)(d) and 427.104(1)(h), Plaintiff Gajewski seeks for herself \$1,000.00 in actual or statutory damages and \$100,000.00 for the Class.

E. An award of attorneys' fees and costs to counsel for Plaintiff and the Class;

F. Injunctive relief, including an order enjoining Capital One from violating the TCPA and WCA in the future;

G. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the lawyers and law firms representing Plaintiff as counsel for the Class;

H. Such other relief as the Court deems just and proper.

Dated: April 27, 2017

ADEMI & O'REILLY, LLP

By: /s/ John D. Blythin
Shpetim Ademi (SBN 1026973)
John D. Blythin (SBN 1046105)
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dmorris@ademilaw.com

EXHIBIT A

JENNIFER GAJEWSKI
3660 E. BARBARA CT. #3
OAK CREEK, WI 53154

February 23, 2017

VIA U.S. MAIL

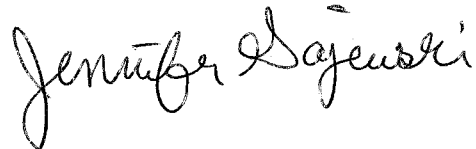
Capital One Card Services
Customer Center
PO Box 30256
Salt Lake City, UT 84130-0256

Re: Revoking consent to call phone
Account Ending in No. 4589

Dear Capital One Card Services:

I hereby revoke any prior express consent, supposedly previously given to you or anyone else, to call the telephone number [REDACTED] 4999. Please immediately cease all calls to this number.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Gajewski".

Jennifer Gajewski

Exhibit B

JENNIFER GAJEWSKI
3660 E. BARBARA CT. #3
OAK CREEK, WI 53154

February 23, 2017

VIA U.S. MAIL

Capital One Retail Services
PO Box 30258
Salt Lake City, UT 84130-0258

Re: Revoking consent to call phone
"Justice" Account Ending in No. 8438

Dear Capital One Retail Services:

I hereby revoke any prior express consent, supposedly previously given to you or anyone else, to call the telephone number [REDACTED] 4999. Please immediately cease all calls to this number.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Gajewski".

Jennifer Gajewski

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 THE REVERSE OF THE FORM.)

Place an X in the appropriate Box: Green Bay Division Milwaukee Division

I. (a) PLAINTIFFS
JENNIFER GAJEWSKI

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

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Ademi & O'Reilly, LLP, 3620 E. Layton Ave., Cudahy, WI 53110
 (414) 482-8000-Telephone (414) 482-8001-Facsimile

DEFENDANTS
CAPITAL ONE BANK (USA), N.A.

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

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

Attorneys (If Known)

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

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 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 | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|--|--|--|---|---|
| <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions | |

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 7 Appeal to District Judge from Magistrate Judgment

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:
 Violation of Telephone Consumer Protection Act and Wisconsin Consumer Act

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____ **CHECK YES only if demanded in complaint:**
JURY DEMAND: Yes No

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

DATE: April 27, 2017 SIGNATURE OF ATTORNEY OF RECORD: s/ John D. Blythin

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.C.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; 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

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 dollar amount (in thousands of dollars) 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

for the

Eastern District of Wisconsin

Jennifer Gajewski

Plaintiff

v.

Capital One Bank USA, N.A.

Defendant

)
)
)
)
)
)
)

Civil Action No. 17-cv-601

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) CAPITAL ONE BANK (USA), N.A.
1680 Capital One Drive
McLean, VA 22102-3491

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

John D. Blythin
Ademi & O'Reilly, LLP
3620 East Layton Avenue
Cudahy, WI 53110
(414) 482-8000-Telephone

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. 17-cv-601

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: [Who's On Your Phone? Capital One Bank Hit with Lawsuit Over Robocalls](#)
