

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Michael Johnson, *on behalf of himself and all
others similarly situated*,

Plaintiff,

v.

Comodo Group, Inc., Comodo CA, Inc.,

Defendants.

Civil Action No.: 16-cv-04469-SDW-LDW

**THIRD AMENDED CLASS ACTION
COMPLAINT**

For this, his Third Amended Class Action Complaint, Plaintiff Michael Johnson, by and through undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, states as follows:

INTRODUCTION

1. The Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the “TCPA”), was enacted to “protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile machines and automatic dialers.” S. Rep. No. 102–178, at 1 (1991), reprinted in 1991 U.S.C.C.A.N. 1968. The TCPA was enacted in response to an increasing number of consumer complaints arising from the increased number of telemarketing calls. *See id.* at 2.

2. By cold calling consumers to sell and market internet security certificates using artificial and prerecorded voices without the called party’s prior express written consent, Defendant Comodo Group, Inc. (“Comodo”), flagrantly violated the TCPA.

3. Comodo identified Plaintiff Michael Johnson (“Plaintiff”) as a sales target, found his cellular number online and proceeded to call it with an automatic dialer and with prerecorded messages, without any consent whatsoever, to sell internet certificates on its own behalf and on behalf of Comodo CA.

4. Plaintiff was far from alone in this regard. The process by which he was targeted and called by Comodo was a programmatic and intentional marketing and sales campaign. It has resulted in scores of complaints regarding Defendant’s telephone marketing tactics to the Better Business Bureau and on internet message boards. Plaintiff brings this class action for relief under the TCPA for himself and all others similarly situated.

PARTIES, JURISDICTION AND VENUE

5. Plaintiff is and at all times mentioned herein was an individual person residing in Oregon.

6. Comodo is a Delaware business entity headquartered in Clifton, New Jersey. Comodo was founded in 1998 by its current chief executive officer Melih Abdulhayoglu.

7. Non-party Comodo CA Limited (“Comodo CA”) was founded in the year 2000 by Melih Abdulhayoglu.

8. At all relevant times herein, Comodo CA was an affiliate and/or subsidiary of Comodo. Melih Abdulhayoglu served as chief executive officer of Comodo CA from approximately the year 2000 through October 25, 2017.

9. Personal jurisdiction and venue in this district are proper pursuant to 28 U.S.C. § 1391(b) because Defendant resides here and a substantial part of the events giving rise to the

claim occurred here.

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331.

THE TELEPHONE CONSUMER PROTECTION ACT

11. The TCPA regulates, among other things, the use of automated telephone dialing systems (“ATDS”) and prerecorded voices.

12. 47 U.S.C. § 227(1)(A)(iii) prohibits any call using an ATDS or a prerecorded voice to a cellular phone without prior express consent by the person called.

13. “Prior express *written* consent” is required before making automated telemarketing calls, meaning there must be a written agreement, signed by the person receiving the call or text, with a “clear and conspicuous disclosure” that specifically authorizes the seller to send telemarketing communications using an automatic telephone dialing system or an artificial or prerecorded voice. 47 C.F.R. § 64.1200.

ALLEGATIONS APPLICABLE TO ALL COUNTS

Comodo Sales Practices

14. During the class period, Comodo was the largest issuer of SSL Certificates in the world with, as of February 3, 2017, a 44% market share on 13.9% of all internet domain names.¹

15. SSL Certificates are encryption keys which permit secure communication between websites and end users.


16. SSL Certificates are sold by “certificate authorities” to facilitate the secure use of websites.

17. SSL Certificates themselves do not last forever. Industry guidelines provide that

¹ Source: https://w3techs.com/technologies/overview/ssl_certificate/all.

SSL Certificates have a maximum validity of three years after which a particular SSL Certificate will expire and a new one must be purchased.

18. SSL Certificates, once sold and in use, contain a great deal of information concerning the issuing party and the using party (i.e. the website operator) as contact information is imbedded in the certificate itself in addition to the certificate's particular expiration date.

19. SSL Certificates, once in use, are accessible through the internet through individual or programmatic means. An individual can click the padlock icon located on an address bar () to review certificate details. A company can also programmatically access SSL Certificates to extract all a certificate's (and every other certificates') relevant data.

20. Comodo created and ran an aggressive marketing and sales program to sell Comodo branded SSL Certificates.

21. Comodo crawls the internet to compile a database of SSL Certificates, their users, their contact information and the particular SSL Certificate's expiration dates. Comodo does this through an automated computer process which reads the certificates themselves as well as pulling names and/or telephone numbers from target websites.

22. Where gaps exist in contact information taken from SSL Certificates and websites, i.e. where they do not have a telephone number to call, Comodo supplements its database with the Whois Registry which provides additional contact information. This process is also an automated computer process.

23. Through this process, Comodo creates a profile for the SSL Certificate: whose it is, who to contact concerning it and when it will expire.

24. When a particular SSL Certificate is 60-90 days from expiration, Comodo's system turns the profile into a "lead" and transfers it to the sales department.

25. The sales department, with facilities located in multiple countries including India, the Philippines, and the United States, does as its name suggests: it cold-calls the leads to sell Comodo SSL Certificates.

26. A lead is loaded into an automated dialing system called "Vicidial."

27. Vicidial is a cloud based automated dialing platform.

28. The telephone number for a particular lead is loaded into the Comodo Sales Campaign in Vicidial.

29. Comodo loads telephone numbers into the campaign, the Vicidial system then dials those numbers throughout the day at a rate which attempts to dial only when a Comodo agent may be available to take an already-dialed and connected call. Once a call is answered, Vicidial will route the call to the available agent; at no point in this process does a human intervene in making the calls.

30. Vicidial also permits Comodo sales representatives to switch from a live call to a prerecorded message. When Vicidial transfers a connected call to a Comodo agent, the agent has the option of leaving a pre-loaded and prerecorded message concerning the sale of Comodo products on an answering machine.

31. Comodo did not scrub its campaign dialing lists to exclude cellular telephone numbers.

32. Comodo did not obtain or attempt to obtain prior express consent for its automated sales calls.

33. Comodo CA was the “certificate authority” which issued the actual SSL certificates marketed by Comodo.

34. The foregoing processes of identifying sales targets and turning them into leads called with the Vicidial predictive dialer and prerecorded marketing messages was developed and implemented by Comodo with and on behalf of Comodo CA to sell Comodo CA SSL certificates.

35. At all relevant times, Comodo CA was run by the same management team as Comodo.

36. Comodo CA knew of and approved of all telemarketing sales practices of Comodo to sell Comodo CA SSL certificates.

37. Comodo CA and Comodo Group both reaped financial rewards from the telemarketing sale of Comodo branded SSL certificates.

38. In October 2017 – during the pendency of this litigation – Melih Abdulhayoglu and Comodo sold off Comodo CA to private equity firm Francisco Partners for in excess of \$400,000,000.00. In March of 2018, Melih Abdulhayoglu was debuted on the Forbes list of World’s Billionaires with an estimated net worth of \$1.6B.

Comodo Calls to Plaintiff

39. Comodo found Plaintiff by crawling the internet for SSL Certificates and finding his contact information in relation to an SSL Certificate, off a website or through the Whois Registry.

40. When one of Plaintiff’s SSL Certificates was near expiration, Comodo turned Plaintiff into a lead and sent his information to the Comodo sales department for targeting.

41. Comodo began calling Plaintiff on May 10, 2016, on his cellular telephone number,

310-xxx-2715, which had been loaded into the Vicidial system and predicatively dialed on that date.

42. The call on May 10, 2016, connected with Plaintiff's answering machine. At that point, the call was routed to a Comodo agent who left the following prerecorded telemarketing voice message:

Hello. We are calling in regards to an expiring security certificate on one of your websites and like to talk to you about some renewal options. If you can give us a call back at 973-915-3190 again the number is 973-915-3190. Thank you.

43. Over the course of the next several months, Comodo repeatedly called the Plaintiff using an automated dialing system and with prerecorded voices. Sometimes, when Plaintiff answered the phone, the system would hang up.

44. On June 16, 2016, after Plaintiff answered the call and it was routed to a Comodo agent in India, Plaintiff told the agent that he was not interested in the Comodo product, which the agent was attempting to sell, and asked that further calls cease.

45. As a result of the June 16, 2016 call, the Comodo agent marked Plaintiff's number as a "do-not-call" number

46. Comodo's "do-not-call" registry is not set up to be automatic, and automated calls to the Plaintiff at his cellular telephone number were placed through the automated Vicidial system up to and including July 7, 2016.

47. Plaintiff is not a Comodo customer. He did not provide his cell phone number to Comodo. He did not provide prior express written consent for Comodo to place automated telemarketing calls to his phone number.

48. Plaintiff was annoyed, frustrated, and inconvenienced by Comodo's cold sales calls

which he did not ask for and which he attempted to stop.

Consumer Complaints Regarding Comodo Sales Calls

49. Myriad consumers have complained about Comodo's unwanted sales calls.

50. For example, on April 24, 2015, the following complaint was filed with the Better Business Bureau ("BBB") ²:

Date Filed: 4/24/2015 12:51:18 PM

Nature of the Complaint: Customer Service Issues

Consumer's Original Complaint:

Comodo has been harassing us! They call a couple times a week and try to pretend we do business with them, which we do not. They are trying to sell us an SSL certificate and act like we are a customers of theirs to trick us into renewing the certificate. We are not a customer of theirs and have told them so repeatedly and to stop calling over and over, but they just keep calling. It's always a different person and when I asked to speak to a manager or supervisor, they just hang up and call back a little while later, hoping to get someone else to help them. I have reported them to the Attorney General in New Jersey & the FTC but nothing has changed, as they called again today. Their number is (201) 620-6929. The number here that they keep calling & harassing us on is [. . .] and the guy that called here today was the first person who didn't speak broken English. I told him the same thing I tell everyone that calls from here, take us off your list, stop harassing us, not interested! Nothing ever changes!!!!

Consumer's Desired Resolution:

STOP CALLING HERE AND HARASSING US! WE ARE NOT NOW OR WILL EVER BE INTERESTED IN DOING BUSINESS WITH THIS COMPANY!!

51. On August 20, 2015, the following complaint was filed with the BBB:

Date Filed: 8/20/2015 3:42:03 PM

Nature of the Complaint: Advertising Issues

Consumer's Original Complaint:

This company ... Comodo, the leading Internet Security Provider offers Free Antivirus, SSL Certificate and other Internet Security related products with complete protection. is

² Complaints regarding Comodo to the BBB were produced in response to a subpoena to the BBB of New Jersey. The subpoena response included consumer identification information. Such information is redacted in the few complaints included herein.

HARASSING us with phone calls trying to get our business. We have told them to remove us from their call list. They won't stop calling. We have repeatedly told them that we don't want any more calls from Comodo. They call right back. The next day they call with a different name 'Certificate authority'. STOP CALLING US. STOP HARASSING US!!! I know they are just trying to get us to do business with them, but calling 10 times a day is harassment. We will NEVER do business with Comodo because of their tactics. https://en.wikipedia.org/wiki/Certificate_authority Certificate authority Rank Issuer Usage Market share 1 Comodo 5.3% 35.6% 2 Symantec 4.7% 31.9% 3 GoDaddy 2.1% 14.0% 4 GlobalSign 1.5% 10.0% 5 DigiCert 0.4% 2.7%

Consumer's Desired Resolution:

Stop the phone calls and harassment.

52. On April 27, 2016, the following complaint was filed with the BBB:

Date Filed: 4/27/2016 3:39:32 PM

Nature of the Complaint: Advertising Issues

Consumer's Original Complaint:

Repeated daily calls from Comodo (usually phone number 201.620.6929) telling me a website security certificate at the agency I work at is about to expire. Want to know how much I DON'T care since 1) I'm not involved in this and 2) we have an entire IT department that deals with keeping things up to date. They won't tell me who their supervisor is so I can tell them to stop calling me, and when they say they will connect me to the supervisor they just hang up. This number above is all over the internet as a nuisance/scam yet it seems no one does anything about it.

Consumer's Desired Resolution:

Desired outcomes: 1) stop calling me, 2) stop harassing people at work, 3) go out of business and live in poverty forever.

53. On June 29, 2016, the following complaint was filed with the BBB:

Date Filed: 6/29/2016 2:33:12 PM

Nature of the Complaint: Advertising Issues

Consumer's Original Complaint:

Comodo appears to use excessive marketing practices to sell their product. When I am within 60 days of a website security certificate expiring on my website (certificate is by another vendor), Comodo starts calling, multiple times a day, to try to get me to purchase their security certificates. They seem to be using a robodialer of some sort, or a database. I get multiple calls per day, and it's a different individual from their company each time. Their marketing efforts seem completely inappropriate, a nuisance, and I would almost say harassment. Asking them to stop calling and/or ignoring their calls seems to have no effect.

54. In addition to BBB complaints, numerous consumers have complained about Comodo sales calls on internet message boards:

02-09-2010, 04:22 PM
#1

AHDOnline
Premium Member

PREMIUM MEMBER

Join Date: Aug 2002
Location: Pittsburgh
Posts: 136

Comodo's ridiculous sales tactics

I am getting pretty fed up with comodo and how they are attempting to get sales.

They are cold calling myself and my customers that have an expiring SSL certificate. I have talked to one lady in the past who was rude and very adamant to talking to the person in charge of security for my site, then presses telling me that I am not getting the best solution from my current provider and Comodo specializes in SSL and will beat any offer. Fine, but don't scare my customer into your stupid SSL.

Even after I introduced myself as the current host, she didn't catch on and still dissed my company to try to sale a SSL renewal. When a phone call doesn't work they follow up with email.

They are pushy, rude, and don't care about your concerns.


Today I have gotten 6 calls from one of the sales lines with no messages. Just call and call until you answer then push their crap on you.

This is getting ridiculous and needs to stop.

Its almost like they work with the domain registry of america...

Anyone else noticing this happening?
For future reference just block the number
(201)716-4468, there are a couple more I will pull from my phone records.

<http://www.webhostingtalk.com/showthread.php?t=925434>.



Matt
23 Nov 2015

0

This is from Comodo SSL who saw our company's SSL certificate purchased from another issuer (GoDaddy) was about to expire. They identified themselves only as "The Certificate Issuer" and were trying to get us to switch to their SSL Certificate instead of renewing through GoDaddy. They repeatedly call despite our telling them not to. I simply won't talk to them anymore. Don't waste your time.

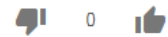
Caller: Comodo SSL
Call type: Telemarketer

<https://800notes.com/Phone.aspx/1-973-915-3190>.



X

17 Jul 2017



Sales call from Comodo. BEWARE if you get this call. In my case, my website's SSL (HTTPS) certificate was not even from Comodo, they were just cold-calling random people. I directed them to not call me, and told them they were calling my personal cell phone. They promised to remove me from their list and never call me again, and then they continued calling me. I will never do business with Comodo.

Caller: Comodo Group, New Jersey

Call type: Telemarketer

<https://800notes.com/Phone.aspx/1-908-710-9014>.

CLASS ALLEGATIONS

55. On January 31, 2020, and pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3), the Honorable Susan D. Wigenton certified the following class:

(1) All persons in the United States (2) to whose cellular telephone number Comodo made a telemarketing call (3) using the ViciDial ATDS or a prerecorded voice (4) within four years of the filing of the complaint.

56. Plaintiff will seek to amend the definition of the certified class and to represent the following:

(1) All persons in the United States (2) to whose cellular telephone number Comodo made a telemarketing call (3) using a prerecorded voice (4) within four years of the filing of the complaint.

57. Plaintiff represents and is a member of the Class.

58. The Class numbers in the thousands.

59. 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 Defendant.

60. There are questions of law and fact common to the members of the Classes which predominate over any questions that affect only individual Class members. Those common

questions of law and fact include, but are not limited to, the following:

- i. Whether Defendant engaged in a pattern of using an automated/prerecorded voice on calls to cellular telephones;
- ii. Whether Defendant had prior express written consent to place the calls; and
- iii. Whether Defendant willfully violated the TCPA.

61. As a person who received prerecorded telephone calls from Comodo on his cellular phone without having given prior express written consent, Plaintiff asserts claims that are typical of the members of the Class. Plaintiff 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.

62. Plaintiff has retained counsel experienced in handling class action claims, including class claims involving violations of federal and state consumer protection statutes such as the TCPA.

63. 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 individual Class members in individually controlling the prosecution of separate claims against Defendant is small because the statutory damages for violation of the TCPA are small in comparison to the costs and expenses of litigation of such claims. Management of these claims is likely to present few difficulties because the calls at issue are all automated and the Class members did not provide the prior express written consent required under the statute to authorize calls to their cellular telephones as Defendant did not attempt to obtain prior express written consent required by the TCPA prior to placing the calls.

64. Defendant has acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class appropriate. Moreover, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

COUNT I – VIOLATIONS OF THE TCPA

65. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

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

67. Comodo used prerecorded voices in calls to the wireless telephone number of Plaintiff and other Class members. These phone calls were made without the prior express written consent of Plaintiff or the other Class members and were not made for emergency purposes.

68. Defendant has therefore violated the TCPA, 47 U.S.C. § 227(b)(1)(A), which makes it “unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using . . . an artificial or prerecorded voice.”

69. Each of the aforementioned calls constitutes a violation of the TCPA.

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

71. Plaintiff and Class members are also entitled to and do seek injunctive relief prohibiting Defendant’s violation of the TCPA in the future.

72. Plaintiff and Class members are also entitled to and do seek a declaration that:

- Defendant violated the TCPA;

- Defendant placed calls to the Plaintiff and the Classes without prior express written consent.

COUNT II – WILLFUL VIOLATIONS OF THE TCPA

73. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

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

75. Comodo used prerecorded voices in calls to the wireless telephone number of Plaintiff and the other Class members. These phone calls were made without any consent, let alone prior express written consent, of Plaintiff or the other Class members and were not made for emergency purposes.

76. Comodo has therefore violated the TCPA, 47 U.S.C. § 227(b)(1)(A), which makes it “unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using . . . an artificial or prerecorded voice.”

77. Each of the aforementioned calls constitutes a willful violation of the TCPA.

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

79. Plaintiff and Class members are also entitled to and do seek injunctive relief prohibiting Defendant’s violation of the TCPA in the future.

80. Plaintiff and TCPA Class members are also entitled to and do seek a declaration that:

- Defendant knowingly and/or willfully violated the TCPA;

- Defendant knowingly and/or willfully used an artificial or prerecorded voice on calls to Plaintiff and the Class;
- Defendant willfully used artificial or prerecorded voices on calls to non-customers such as Plaintiff and the Class, knowing it did not have prior express consent to do so;
- Defendant willfully disregarded non-customer consumers' requests for Comodo to cease calling; and
- It is Defendant's practice and history to use artificial or prerecorded voices on telephone calls to non-customers without their prior express consent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of Plaintiff and the Classes and against Defendant for:

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

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on issues so triable.

Dated: September 1, 2021

Respectfully submitted,
PLAINTIFF, Michael Johnson

By: /s/ Stephen Taylor
Stephen Taylor
Sofia Balile

LEMBERG LAW, LLC
43 Danbury Road
Wilton, CT 06897
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2021, a copy of the foregoing was filed with the Clerk of the Court through the CM/ECF system which gave notice of such filing to all parties of record.

By: /s/ Stephen Taylor
Stephen Taylor
/s/ Sofia Balile
Sofia Balile