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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

DOUGLAS LACY, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

COMCAST CORPORATION,

Defendant.

CASE NO.

COMPLAINT—CLASS ACTION

DEMAND FOR JURY TRIAL

COMPLAINT – CLASS ACTION

Terrell Marshall Law Group PLLC
936 N. 34th Street, Suite 300
Seattle, WA 98103
Tel: 206-816-6603 / Fax: 206-319-5450

1 Plaintiff Douglas Lacy, individually and on behalf of others similarly situated, alleges the
2 following against Comcast Corporation (“Comcast” or “Defendant”).

3
4 **NATURE OF ACTION**

5 1. Since January, 2018, Comcast has repeatedly called Mr. Lacy’s cellular phone
6 about a Comcast account that does not belong to him. Comcast used an automatic telephone
7 dialing system (“ATDS”) and an artificial or prerecorded voice to make these calls.

8 2. Plaintiff began receiving Comcast’s calls shortly after he got a new cellular
9 phone number in January, 2018. Mr. Lacy has not been a Comcast customer since 2013 and did
10 not consent to receive calls from Comcast five years after he terminated his Comcast
11 subscription. Plaintiff informed Comcast that it has the wrong number and asked Comcast to
12 stop calling him. Comcast, nevertheless, continues to make calls to Plaintiff’s cellular phone
13 without his consent.

14 3. Plaintiff brings this class action for damages and other equitable and legal
15 remedies resulting from Defendant’s violation of the Telephone Consumer Protection Act, 47
16 U.S.C. § 227, *et seq.* (“TCPA”).

17 **JURISDICTION AND VENUE**

18 4. This Court has original jurisdiction over Plaintiff’s TCPA claims pursuant to 28
19 U.S.C. § 1331, because they present a federal question.

20 5. This Court has personal jurisdiction over Comcast because it directed the call
21 that is the subject of this action to Plaintiff’s cellular phone. Plaintiff’s cellular phone uses a
22 Washington area code and was, at all relevant times, located in Washington. Comcast
23 continuously and systematically conducts business in Washington.

24 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial
25 part of the events and omissions giving rise to Plaintiff’s claims occurred in this District.

26 **PARTIES**

27 7. Plaintiff Douglas Lacy resides in Spanaway, Washington.

1 8. Defendant Comcast is a Pennsylvania corporation with headquarters at One
2 Comcast Center, Philadelphia, Pennsylvania 19103-2838.

3
4 **FACTUAL ALLEGATIONS**

5 **A. Comcast Made Non-Emergency Calls to the Cellular Phones of Plaintiff and Other**
6 **Consumers Without Their Prior Express Consent.**

7 9. Plaintiff's telephone number, (XXX) XXX-6397, is assigned to a cellular
8 telephone service. Plaintiff first acquired this cellular phone number in January, 2018.

9 10. Since January 2018, Comcast has called Plaintiff's cellular phone at least 143
10 times and left at least 55 voicemails.

11 11. Plaintiff received at least 142 calls from the number 1-800-266-2278. Plaintiff
12 received at least one call from 1-855-692-3151.

13 12. Comcast's calls pertain to a Comcast account that does not belong to Plaintiff.

14 13. Comcast's calls to Plaintiff's cellular phone are intended for some person other
15 than Plaintiff.

16 14. Plaintiff has not been a Comcast customer or subscriber since 2013.

17 15. Plaintiff did not consent to receive calls from Comcast after he terminated his
18 subscription in 2013. Plaintiff never consented to receive Comcast calls intended for other
19 Comcast customers.

20 16. Plaintiff received at least 54 voicemails from the number 1-800-266-2278. All
21 of these voicemails are identical. Each voicemail delivers the following message with an
22 artificial or prerecorded voice: "Hi, this is Comcast calling with an important message. Please
23 call us back at 1-800-266-2278 to learn more."

24 17. The voicemail plaintiff received from 1-855-692-3151 also delivers a message
25 with an artificial or prerecorded voice. The message directs Plaintiff to return Comcast
26 equipment. Plaintiff is not in possession of any Comcast equipment. He returned the only
27 Comcast equipment that he has ever possessed when he terminated his subscription in 2013.

1 18. Plaintiff called back the 1-855-692-3151 number and learned that Comcast was
2 looking for someone named Andrew Hansen. Plaintiff does not know anybody named Andrew
3 Hansen and has never had any sort of relationship with anyone named Andrew Hansen.
4 Plaintiff informed Comcast that it had the wrong number.

5 19. The content of Comcast's messages demonstrates that Comcast's calls were not
6 made for an emergency purpose.

7 20. Plaintiff answered at least two calls placed by Comcast, informed Comcast that
8 he was not the intended recipient of the calls, and requested that Comcast stop calling him.

9 21. Plaintiff continued to receive calls from Comcast after asking Comcast to stop
10 calling him.

11 22. Comcast has been sued multiple times for calling behavior similar to the
12 behavior described in this complaint.

13 23. Comcast is aware of the TCPA's prohibitions against the use of automatic
14 dialing systems and artificial or prerecorded voices to make calls to cellular phones without the
15 prior express consent of the called party. Comcast therefore knowingly or willfully caused
16 autodialed calls to be made to the cellular phones of Plaintiff and other consumers without their
17 prior express consent.

18 24. In addition, each call Comcast made to Plaintiff's cellular phone after he
19 informed Comcast that it was calling the wrong number was made knowingly or willfully.

20 **B. Comcast Used an ATDS and an Artificial or Pre-recorded Voice.**

21 25. Each time that it called his cellular phone, Comcast called Plaintiff using an
22 ATDS. Plaintiff noted a pause before the start of each message he received when he did not
23 answer, and before being connected to the call when he did answer, which is characteristic of a
24 call placed by an ATDS.

25 26. Comcast also called Plaintiff using a prerecorded or artificial voice, as evidenced
26 by the tone and cadence of the voice on the calls and voicemails.

1 27. Comcast is a publicly traded company with a market cap exceeding \$153 billion.
2 With approximately 60 million customers, the scale of Comcast's business requires the use of a
3 sophisticated dialing system capable of storing phone numbers and dialing them automatically,
4 as well as delivering messages without requiring the involvement of human agents.

5 28. The equipment used to call Plaintiff and others not only had the capacity to store
6 or produce telephone numbers to be called using a random or sequential number generator, but
7 was programmed to sequentially or randomly access stored telephone numbers to automatically
8 call such numbers for the calls that are the subject of this case. The equipment generated, and
9 then stored, a sequence of telephone numbers for calling, and then automatically called those
10 numbers. The calls were part of a campaign that made numerous phone numbers in a short
11 period of time without human intervention.

12 **C. Comcast's Violations of the TCPA Harmed Plaintiff**

13 29. During the relevant period, Plaintiff has carried his cellular phone with him at
14 most times so that he can be available to family, friends, and his employer.

15 30. Comcast's repeated calls invaded Plaintiff's privacy and intruded upon his right
16 to seclusion. The calls frustrated and upset Plaintiff by constantly interrupting his daily life and
17 wasted his time.

18 31. Comcast's calls and voicemails intruded upon and occupied the capacity of
19 Plaintiff's cellular phone and depleted the battery of Plaintiff's cellular phone. The calls
20 temporarily seized and trespassed upon Plaintiff's use of his cellular phone, and caused him to
21 divert attention away from other activities to address the calls and voicemails. The clutter of
22 Comcast's calls and voicemails also impaired the usefulness of the call log feature of Plaintiff's
23 cellular phone.

24 **CLASS ACTION ALLEGATIONS**

25 32. Plaintiff brings this lawsuit under Federal Rules of Civil Procedure Rules 23(a),
26 (b)(2), and (b)(3) as a representative of the following class:

1 Each person within the United States who (1) received a non-emergency call
2 to his or her cellular telephone; (2) from Comcast; (3) through the use of an
3 ATDS and/or an artificial or prerecorded voice; and (4) who was not a
4 Comcast customer or subscriber at the time of the call(s).

5 Plaintiff reserves the right to amend the class definition following an appropriate period of
6 discovery.

7 33. Excluded from the Class are Comcast, its employees, agents and assigns, and any
8 members of the judiciary to whom this case is assigned, their respective court staff, and
9 Plaintiff's counsel. This suit seeks only damages and injunctive relief for recovery of economic
10 injury on behalf of the Class; it does not seek recovery for personal injury, wrongful death, or
11 emotional distress.

12 34. Because auto-dialing equipment maintains records of each contact, members of
13 the above-defined Class can be identified through Comcast's records.

14 Numerosity

15 35. At the time of filing, Plaintiff does not know the exact number of Class
16 Members. But the volume of cellular telephone numbers reassigned on a daily basis¹ and the
17 number of Comcast customers indicate that Class Members likely number in the hundreds of
18 thousands, if not millions, and are geographically disbursed throughout the country.

19 36. The alleged size and geographic disbursement of the Class makes joinder of all
20 Class Members impracticable.

21 Commonality and Predominance

22 37. Common questions of law and fact exist with regard to each of the claims and
23 predominate over questions affecting only individual Class members. Questions common to the
24 Class include:

25 a. Whether Comcast's dialing system(s) constitute an ATDS under the
26 TCPA;

27 ¹ According to the Federal Communications Commission, as many as 100,000 cell numbers are
28 reassigned every day. *In the Matter of Rules & Regulations Implementing the Telephone
Consumer Protection Act of 1991*, 30 F.C.C. Rcd. 7961 (July 10, 2015).

1 rulings. By contrast, a class action presents fewer management difficulties, allows claims to be
2 heard which would otherwise go unheard because of the expense of bringing individual
3 lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive
4 supervision by a single court.

5 **FIRST CLAIM FOR RELIEF**
6 **Negligent Violation of the Telephone Consumer Protection Act**
7 **47 U.S.C. § 227, et seq.**

8 41. Plaintiff incorporates the above allegations by reference.

9 42. Comcast used an automatic telephone-dialing system and/or an artificial or
10 prerecorded voice to make non-emergency calls to the cellular telephones of Plaintiff and Class
11 members, without their prior express consent.

12 43. The foregoing acts and omissions constitute negligent violations of the TCPA,
13 including, but not limited to, violations of 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §§
14 64.1200(a)(1)(iii).

15 44. Under 47 U.S.C. § 227(b)(3)(B), and as a result of the alleged negligent
16 violations of the TCPA, Plaintiff and Class members are entitled to an award of \$500.00 in
17 statutory damages for each and every call placed in violation of the TCPA.

18 45. Plaintiff and Class members are also entitled to and seek injunctive relief
19 prohibiting future violations of the TCPA.

20 **SECOND CLAIM FOR RELIEF**
21 **Knowing or Willful Violation of the Telephone Consumer Protection Act**
22 **47 U.S.C. § 227, et seq.**

23 46. Plaintiff incorporates the above allegations by reference.

24 47. Comcast used an automatic telephone-dialing system and/or an artificial or
25 prerecorded voice to make non-emergency calls to the cellular telephones of Plaintiff and Class
26 members, without their prior express consent.

1 48. The foregoing acts and omissions constitute knowing and/or willful violations of
2 the TCPA, including, but not limited to, violations of 47 U.S.C. § 227(b)(1)(A)(iii) and 47
3 C.F.R. §§ 64.1200(a)(1)(iii).

4 49. Under 47 U.S.C. § 227(b)(3)(C), and as a result of the alleged knowing and/or
5 willful violations of the TCPA, Plaintiff and Class Members are entitled to an award of
6 \$1,500.00 in statutory damages for each and every call placed in violation of the TCPA.

7 50. Plaintiff and Class Members are also entitled to and seek injunctive relief
8 prohibiting future violations of the TCPA.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of the Class defined above,
11 respectfully requests that this Court:

12 A. Determine that the claims alleged herein may be maintained as a class action
13 under Federal Rule of Civil Procedure 23, and issue an order certifying the Class defined above
14 and appointing Plaintiff as the Class representative;

15 B. Award \$500 in statutory damages for each and every call that Comcast
16 negligently placed in violation of 47 U.S.C. § 227(b)(1) of the TCPA;

17 C. Award \$1,500 in statutory damages for each and every call that Comcast
18 willfully or knowingly placed in violation of 47 U.S.C. § 227(b)(1) of the TCPA;

19 D. Grant appropriate injunctive and declaratory relief, including, without limitation,
20 an order requiring Comcast to implement measures to stop future violations of the TCPA; and

21 E. Grant such further relief as the Court deems proper.

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby demands a trial by jury.
24
25
26

1 Dated: January 4, 2019

Respectfully submitted,

2 TERRELL MARSHALL LAW GROUP PLLC

3
4 By: /s/ Beth E. Terrell, WSBA #26759
Beth E. Terrell, WSBA #26759
5 Email: bterrell@terrellmarshall.com

6 By: /s/ Jennifer Rust Murray, WSBA #36983
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17 **Pro Hac Vice* Application Forthcoming

18 *Counsel for Plaintiff and the Proposed Class*

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

DOUGLAS LACY

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Beth E. Terrell, WSBA #26759, Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98103-8869, Seattle, Washington, 98103; Telephone: (206) 816-6603

DEFENDANTS

COMCAST CORPORATION

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.

Attorneys (If Known)

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

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

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

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

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

Click here for: Nature of Suit Code Descriptions.

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

47 U.S.C. § 227

Brief description of cause:

Telephone Consumer Protection Act violations

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/04/2019

/s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

DOUGLAS LACY, on behalf of himself and all others
similarly situated,

Plaintiff(s)

v.

COMCAST CORPORATION,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) COMCAST CORPORATION
c/o CT Corporation System Philadelphia
Philadelphia Regional Service Office
Two Commerce Square
2001 Market Street, 5th Floor
Philadelphia, Pennsylvania 19103

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:

Beth E. Terrell, WSBA #26759
Email: bterrell@terrellmarshall.com
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603
Facsimile: (206) 319-5450

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. _____

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](#)
