

whom it has no relationship, with calls containing prerecorded and artificial voices.

5. Plaintiff is such a consumer. He is not an MATCO customer yet has been bombarded with pre-recorded calls made without her consent and over her explicit objection.

6. Plaintiff seeks relief for herself and all others similarly situated for MATCO's unlawful behavior.

JURISDICTION AND VENUE

7. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740, 751-53 (2012).

8. Jurisdiction in this District is proper pursuant to 28 U.S.C. § 1332(d)(2), as Plaintiff seeks up to \$500 in damages for each violation of the TCPA, which when aggregated among a proposed class numbering more than a thousand members, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Plaintiff also alleges a national class which will result in at least one class member residing in a different state.

9. The Court has personal jurisdiction over MATCO, and Venue is proper in this District, as MATCO regularly conducts business within this District, and the conduct forming the basis of Plaintiff's claim occurred within this District.

PARTIES

10. Plaintiff is, and at all times mentioned herein was, an adult individual residing in Pensacola, Florida.

11. MATCO is a Delaware corporation with its principal place of business located at 4403 Allen Road, Stow, Ohio 44224

12. Plaintiff has never had a business relationship with MATCO and never consented to be contacted by MATCO on her cellular telephone.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

13. The TCPA regulates, among other things, the use of automated telephone dialing systems.

14. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system (“ATDS”) as equipment having the capacity –

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

15. 47 U.S.C. § 227(b)(1)(A)(iii) prohibits any call using an ATDS or an artificial or prerecorded voice to a cellular phone without prior express consent by the person being called.

ALLEGATIONS APPLICABLE TO ALL COUNTS

16. Defendant has repeatedly placed calls using an ATDS and containing a prerecorded and/or artificial voice to Plaintiff’s cellular telephone (850) XXX-4066.

17. Plaintiff’s number was and is assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

18. MATCO calls Plaintiff from telephone numbers 800-472-0012, 888-362-8599 and 888-362-8597.

19. MATCO has inserted Plaintiff’s telephone number in an automated calling campaign to further its efforts to contact “Justin Farley,” a person who Plaintiff does not have any relationship with and does not know.

20. Beginning on or about December 27, 2012, MATCO has bombarded the Plaintiff with multiple daily automated and prerecorded message calls

21. On December 28, 2017, Plaintiff called MATCO, told it that she was calling from the -4066 number, stated that she is not “Justin Farley” and that Justin Farley cannot be reached at her cellular telephone, and asked MATCO to stop calling her.

22. Nevertheless, the calls to Plaintiff at the -4066 number have persisted and continued.

23. At all times mentioned herein, MATCO called Plaintiff’s cellular telephone using an “automatic telephone dialing system” (“autodialer”) as defined by 47 U.S.C. § 227(a)(1). When Plaintiff answered calls from MATCO, she heard a prerecorded greeting from MATCO before the call would be routed to a live agent. This is indicative of MATCO’s use of a “predictive dialer.”

24. The Federal Communications Commission has defined ATDS under the TCPA to include “predictive dialers.” *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, at ¶ 12, 2008 WL 65485 (F.C.C.) (2008).

25. In addition, upon information and belief the hardware and software combination utilized by MATCO has the capacity to store and dial sequentially generated numbers, randomly generated numbers or numbers from a database of numbers.

26. Defendant uses prerecorded and artificial voices when it calls the Plaintiff’s cellular telephone. When Plaintiff answers MATCO’s calls, she heard an artificial and/or prerecorded voice identifying the call as coming from MATCO.

27. The same message has been used by the Defendant on multiple occasions.

28. Defendant did not have Plaintiff’s prior express consent to place automated calls to Plaintiff on her cellular telephone.

29. Defendant did not have Plaintiff's prior express consent to call Plaintiff using an artificial or prerecorded voice.

CLASS ACTION ALLEGATIONS

A. The Class

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

31. Plaintiff represents, and is a member of the following class:

Class A

All persons within the United States to whom MATCO or its agent/s and/or employee/s called said person's cellular telephone through the use of any automatic telephone dialing system within the four years prior to the filing of the Complaint where such person was not a customer of MATCO.

Class B

All persons within the United States to whom MATCO or its agent/s and/or employee/s called said person's cellular telephone with an artificial or prerecorded voice within the four years prior to the filing of the Complaint where such person was not a customer of MATCO.

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

B. Numerosity

33. Upon information and belief, Defendant has placed automated and/or prerecorded message calls to cellular telephone numbers belonging to thousands of consumers, after being informed it was calling the wrong party, throughout the United States. The members of the Classes, therefore, are believed to be so numerous that joinder of all members is impracticable.

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

C. Common Questions of Law and Fact

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

- a. Whether Defendant made calls to Plaintiff and Class members' cellular telephones using an ATDS;
- b. Whether Defendant made calls to Plaintiff and Class members' cellular telephones using an artificial or prerecorded voice;
- c. Whether Defendant can meet its burden of showing it obtained prior express consent to make each call;
- d. Whether Defendant's conduct was knowing willful, and/or negligent;
- e. Whether Defendant is liable for damages, and the amount of such damages;
and
- f. Whether Defendant should be enjoined from such conduct in the future.

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

D. Typicality

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

E. Protecting the Interests of the Class Members

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

F. Proceeding Via Class Action is Superior and Advisable

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

40. Management of this class action is unlikely to present any difficulties. Several courts have certified classes in TCPA actions. These cases include, but are not limited to: *Mitchem v. Ill. Collection Serv.*, 271 F.R.D. 617 (N.D. Ill. 2011); *Sadowski v. Med1 Online, LLC*, 2008 WL 2224892 (N.D. Ill., May 27, 2008); *CE Design Ltd. V. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D. Ill. 2009); *Lo v. Oxnard European Motors, LLC*, 2012 WL 1932283 (S.D. Cal., May 29, 2012).

COUNT I
Negligent Violations of the Telephone Consumer Protection Act,
47 U.S.C. § 227, et seq.

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

42. Defendant negligently placed multiple automated and prerecorded/artificial voice calls to cellular numbers belonging to Plaintiff and the other members of the Classes without their prior express consent.

43. Each of the aforementioned calls by Defendant constitutes a negligent violation of

the TCPA.

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

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

46. Plaintiff and the Class are also entitled to and do seek a declaration that:

- a. Defendant violated the TCPA;
- b. Defendant utilized an ATDS to call Plaintiff and the Classes;
- c. Defendant placed artificial and prerecorded voice calls to Plaintiff and the Classes;
- d. Defendant placed automated and artificial and prerecorded voice calls to the Plaintiff and the Classes without prior express consent.

COUNT II

Knowing and/or Willful Violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.

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

48. Defendant knowingly and/or willfully placed multiple automated and prerecorded/artificial voice calls to cellular numbers belonging to Plaintiff and the other members of the Classes without their prior express consent.

49. Each of the aforementioned calls by Defendant constitutes a knowing and/or willful violation of the TCPA.

50. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff and the Class are entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

52. Plaintiff and the Classes are also entitled to and do seek a declaration that:

- a. Defendant knowingly and/or willfully violated the TCPA;
- b. Defendant knowingly and/or willfully used an ATDS to call Plaintiff and the Classes;
- c. Defendant knowingly and/or willfully placed artificial and prerecorded voice calls to Plaintiff and the Classes;
- d. Defendant willfully placed artificial and prerecorded voice calls to non-customers such as Plaintiff and the Classes, knowing it did not have prior express consent to do so; and
- e. It is Defendant's practice and history to place automated and artificial/prerecorded voice calls to non-customers without their prior express consent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant Plaintiff and the Class the following relief against Defendant:

1. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
2. Declaratory relief as requested;
3. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
4. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
5. An award of attorneys' fees and costs to counsel for Plaintiff; and

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

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: February 2, 2018

Respectfully submitted,

By /s/ Sergei Lemberg

Sergei Lemberg, Esq.

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Attorneys for Plaintiff

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

UNITED STATES DISTRICT COURT

for the

Northern District of Florida

Alexis Laisney, on behalf of herself and all others
similarly situated,

Plaintiff(s)

v.

Matco Tools Corporation

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Matco Tools Corporation
4403 Allen Road
Stow, Ohio 44224

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:

Sergei Lemberg, Esq.
Lemberg Law, LLC.
43 Danbury Road, 3rd Floor
Wilton, Connecticut

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 and can be found in this post: [Matco Tools Accused of Illegally Calling Consumer's Cell Phone Without Consent](#)
