

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

CESAR PINEDA, individually and on behalf of a
class of others similarly situated,

Plaintiff,

CASE NO. 1:18cv23854

v.

CLASS ACTION

TELECLARO, LLC,

Jury Trial Demanded

Defendant.

COMPLAINT

1. Aimed at protecting consumer privacy, the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”) prohibits, except in limited circumstances, the use of “automatic telephone dialing systems” to call cellular telephones. Specifically, the TCPA prohibits “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 any automatic telephone dialing system or an artificial or prerecorded voice . . . to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call” 47 U.S.C. § 227(b)(1)(A). The TCPA also bans unsolicited telephone marketing calls, including text messages, to members on the national Do-Not-Call list, regardless whether those calls are made using an automatic telephone dialing system or manually dialed.

2. Defendant is in the business of selling international telephonic services. More specifically, Defendant sells telephonic “minutes” at a rate typically cheaper than that charged by

major telephonic carriers.

3. In efforts to increase profits at the expense of consumers' rights, Defendant would often send marketing text messages providing different types of discounts and bonuses for future purchases of international calling minutes to consumers without first obtaining express written consent to send such marketing text messages as required to do so under the TCPA.

4. These messages were sent using mass-automated technology through a third-party company hired by Defendant to send marketing text messages on Defendant's behalf *en masse*.

5. Upon information and belief, the third-party company is Callture Communications, Inc.

6. In sum, Defendant knowingly and willfully violated the TCPA, causing injuries to Plaintiff and members of the putative class, including invasion of their privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.

7. Through this putative class action, Plaintiff seeks injunctive relief to halt Defendant's illegal conduct. Plaintiff also seeks statutory damages on behalf of himself and members of the class, and any other available legal or equitable remedies resulting from the illegal actions of Defendant.

JURISDICTION AND VENUE

8. The Court has federal question subject matter jurisdiction over these TCPA claims. *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012).

9. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute. Jurisdiction is also proper under 28 U.S.C. § 1332(d)(2) because Plaintiff alleges a nationwide class, which will result in at least one class member belonging to a different state than

Defendants. Plaintiff seeks up to \$1,500.00 in damages for each call (text message) in violation of the TCPA, which, when aggregated among a proposed class numbering in the thousands, or more, exceeds the \$5,000,000.00 threshold for federal court jurisdiction under the Class Action Fairness Act (“CAFA”).

10. Venue is proper in the District because a substantial portion of the events complained of occurred here, i.e., Defendant sent its telemarketing text messages which were received in this judicial district.

PARTIES

11. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Miami-Dade County, Florida.

12. Defendant is a Florida corporation with a principal office located at 1068 SW 67 AVE. MIAMI, FL 33144. Defendant directs, markets, and controls all of its retail locations located in the United States.

FACTUAL ALLEGATIONS RELATING TO PLAINTIFF

13. Defendant is in the business of selling international telephonic services. More specifically, Defendant sells telephonic “minutes” at a rate typically cheaper than that charged by major telephonic carriers.

14. In efforts to increase profits at the expense of consumers’ rights, Defendant would often send marketing text messages providing different types of discounts and bonuses for future purchases of international calling minutes to consumers without first obtaining express written consent to send such marketing text messages as required to do so under the TCPA.

15. Upon information and belief, preceding this lawsuit, Defendant has sent at least one-hundred thousand illegal text messages over the last four years to members of the proposed classes.

16. Plaintiff himself was sent at least twenty-five (25) marketing text messages without his express written consent.

17. Defendant's text messages constitute telemarketing because they encourage the future purchase of Defendant's products/services by consumers.

18. Plaintiff received the subject text messages within this judicial district and, therefore, Defendant's violation of the TCPA occurred within this district. Upon information and belief, Defendant caused other text messages to be sent to individuals residing within this judicial district.

19. At no point in time did Plaintiff provide Defendant with his express written consent to be contacted by text for marketing purposes.

20. Plaintiff is the subscriber and sole user of the 2869 Number.

21. Some, if not all of the messages originated from the phone number or short-code "58055."

22. The use of a short-code and the impersonal and generic nature of Defendant's text messages demonstrates that Defendant utilized an ATDS in transmitting the messages. *See Jenkins v. LL Atlanta, LLC*, No. 1:14- cv-2791-WSD, 2016 U.S. Dist. LEXIS 30051, at *11 (N.D. Ga. Mar. 9, 2016) ("These assertions, combined with the generic, impersonal nature of the text message advertisements and the use of a short code, support an inference that the text messages were sent using an ATDS.") (citing *Legg v. Voice Media Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D. Fla. 2014) (plaintiff alleged facts sufficient to infer text messages were sent using ATDS; use of a short code and volume of mass messaging alleged would be impractical without use of an ATDS); *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165, 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants used an ATDS where messages were advertisements written in an impersonal manner and sent from short code); *Robbins v. Coca-Cola Co.*, No. 13-CV-132- IEG NLS, 2013 U.S. Dist. LEXIS 72725, 2013

WL 2252646, at *3 (S.D. Cal. May 22, 2013) (observing that mass messaging would be impracticable without use of an ATDS)).

23. Specifically, upon information and belief, Defendant, through their direction, utilized a combination of hardware and software systems to send the text messages at issue in this case. The systems utilized by Defendant have the current capacity or present ability to generate or store random or sequential numbers or to dial sequentially or randomly at the time the call is made, and to dial such numbers, *en masse*, in an automated fashion without human intervention.

24. Defendant's unsolicited text messages caused Plaintiff actual harm, including invasion of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and caused disruption to his daily life. *See Patriotic Veterans, Inc. v. Zoeller*, No. 16-2059, 2017 WL 25482, at *2 (7th Cir. Jan. 3, 2017) ("Every call uses some of the phone owner's time and mental energy, both of which are precious."). Plaintiff received the subject text message while he was at work, causing him to stop his work activities to check his phone.

25. As outlined above, upon information and belief, Defendant hired a third-party company believed to be Callture to send the marketing text messages in question via the "58055" short code to Plaintiff and members of the proposed class. Callture utilizes software and hardware considered to be an ATDS in sending the text messages in question.

26. The impersonal nature of the text messages and the use of a short-code demonstrates that the text messages at issue were placed using an Automatic Telephone Dialing System as defined by federal law.

27. At no time did Plaintiff provide Defendant with prior express written consent to be sent marketing/promotional text messages to her cellular device with the use of an ATDS.

TEXT MESSAGES PROVIDE TELEMARKETERS WITH INSTANT COMMUNICATION TO CONSUMERS TO PROMOTE GOODS AND SERVICES

28. In recent years, marketers stymied by federal laws limiting solicitation by telephone, facsimile machine, and email have increasingly looked to alternative technologies through which to send bulk solicitations to consumers easily and cheaply.

29. One of the newest methods of bulk marketing is to advertise through text messages sent to mobile phones.

30. Unlike faxes and unanswered phone calls, a text message allows virtually instantaneous communication with the recipient, almost anywhere in the world, day or night. Many cell phones immediately alert the recipient of new text messages. Consumers frequently use text messaging to stay in close contact with business colleagues and associates, family members, and friends. Text messaging is also used by schools, police departments, fire departments, and emergency medical services across the country.

31. The instantaneous nature of text message communication makes it very appealing to telemarketers—and very annoying to consumers subjected to spam text messages.

32. And unlike other forms of advertisement, spam texts can cost its recipients money.

33. Spam text messages are a burgeoning phenomenon. One authority estimates that Americans received more than four billion spam texts in 2011 more than double the number sent just two years earlier.

OVERVIEW OF THE TCPA

34. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227). Specifically, in enacting the TCPA,

Congress outlawed telemarketing via unsolicited automated or pre-recorded telephone calls (“Robocalls”), finding:

Evidence compiled by the Congress indicates that residential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

....

Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call . . . , is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. § 2(10) and (12); *See also Mims v. Arrow Financial Services, Inc.*, 132 S.Ct. 740 (Jan. 18, 2012).

35. While imposing general restrictions on a wide set of telemarketing practices, the TCPA’s strictest provisions apply to telemarketing by automatic telephone dialing system. *See* 47 U.S.C. § 227(b)(1).

36. The statutory definition of an automatic telephone dialing system (sometimes called “autodialer”) is “equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator to dial the numbers[,]” and has the capacity to dial such numbers. Id. § 227(a)(1). The term also extends to predictive dialers and equipment that has the capacity to dial numbers without human intervention. *See In The Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C.R. 14014, 14093 (2003).

37. With the limited exception of calls made for emergency purposes, the TCPA bans all calls to cell phones placed through an autodialer, regardless of whether they solicit the sale of goods or services, unless the recipient of the call provides “prior express consent” to receive the calls. 47 U.S.C. § 227(b); 47 C.F.R. § 64.1200(a)(1).

38. “Prior express consent” exists where a consumer has (a) clearly stated that the telemarketer may call, and (b) clearly expressed an understanding that the telemarketer’s subsequent call will be made for the purpose of encouraging the purchase of goods or services. *See In The Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 10 F.C.C.R. 12391, 12396, para. 11 (1995).

39. Under FCC regulations, telemarketing calls require prior express *written* consent. 47 C.F.R. § 64.1200(a)(2).

40. “Prior express written consent” means an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered. 47 C.F.R. § 64.1200(f)(8).

41. A text message is a call within the meaning of the TCPA. *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir.2009).

Vicarious Liability

42. Under the TCPA, as interpreted by the FCC, a person or entity can be liable for calls made on its behalf even if that person or entity did not directly dial those calls.

43. The FCC has explained that its “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 10 F.C.C Rcd. 12391, 12397 (1995).

44. In 2008, the FCC reiterated that “a company on whose behalf a telephone solicitation is made bears the responsibility for any violations.” *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 23 F.C.C. Rcd. 559, 565 (2008) (specifically recognizing “on behalf of” liability in the context of a robocall sent to a consumer by a third party on another entity’s behalf under 47 U.S.C. 227(b)).

45. In May of 2013, the FCC reinforced this issue. *See In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 F.C.C. Rcd. 6574 (2013) (hereinafter “2013 FCC Ruling Order”) (clarifying that “a seller ... may be vicariously liable under federal common law agency-related principles for violations of either section 227(b) or 227(c) committed by telemarketers that initiate calls to market its products or services.”). The FCC rejected a narrow view of TCPA liability, including the assertion that a seller’s liability requires a finding of formal agency and immediate direction and control over the third-party who placed the telemarketing call. *Id.* n.107.

46. The 2013 FCC Order further explained:

“To provide guidance in this area, we find that the following are illustrative examples of evidence that may demonstrate that the telemarketer is the seller’s authorized representative with apparent authority to make the seller vicariously liable for the telemarketer’s section 227(b) violations. For example, apparent authority may be supported by evidence that the seller allows the outside sales entity access to information and systems that normally would be within the seller’s exclusive control, including: access to detailed information regarding the nature and pricing of the seller’s products and services or to the seller’s customer information. The ability by the outside sales entity to enter consumer information into the seller’s sales or customer systems, as well as the authority to use the seller’s trade name, trademark and service mark may also be relevant. It may also be persuasive that the seller approved, wrote or reviewed the outside entity’s telemarketing scripts. Finally, a seller would be responsible under the TCPA for the unauthorized conduct of a third-party telemarketer that is otherwise authorized to market on the seller’s behalf if the seller knew (or reasonably should have known) that the telemarketer was violating the TCPA on the seller’s behalf and the seller failed to take effective steps within its power to force the telemarketer to cease that conduct. At a minimum, evidence of these kinds of relationships – which consumers may acquire through discovery, if they are not independently privy to such information – should be sufficient to place upon the seller the burden of

demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller's authorized agent.

“[] In sum, under our current rules and administrative precedent interpreting and implementing sections 227(b) and 227(c), we do not think that an action taken for the benefit of a seller by a third-party retailer, without more, is sufficient to trigger the liability of a seller under section either section 227(c) or section 227(b). **However, we see no reason that a seller should not be liable under those provisions for calls made by a third-party telemarketer when it has authorized that telemarketer to market its goods or services.** In that circumstance, the seller has the ability, through its authorization, to oversee the conduct of its telemarketers, even if that power to supervise is unexercised. In the case of either actions to enforce section 227(b) or actions to enforce do-not-call restrictions under section 227(c), we stress that nothing in this order requires a consumer to provide proof – at the time it files its complaint – that the seller should be held vicariously liable for the offending call. (emphasis added)

Id. at ¶¶ 46-47).

47. Accordingly, it is undeniably clear, that an entity can be liable under the TCPA for a call made on its behalf even if the entity did not directly place the call under a number of theories, including vicarious liability. Under those circumstances, the entity is properly deemed to have initiated the call through the person or entity that actually placed the calls.

CLASS ALLEGATIONS

48. Plaintiff brings this action on behalf of two (2) nationwide classes of similarly situated individuals, the first of which consists of:

The No Consent to Text Class: All persons in the United States to whom, within the four years immediately preceding the filing of this Complaint, Defendant or some person acting on Defendant's behalf sent one or more text messages to their cellular telephone advertising Defendant's goods and/or services, through the use of the same or materially similar telephone dialing equipment as that which was used to send the texts at issue to the Plaintiff.

49. Plaintiff is a member of the No Consent to Text Class.

50. The second class consists of:

The DNC Class: All persons in the United States to whom, within the four years immediately preceding the filing of this Complaint, Defendant or some person acting on Defendant's behalf sent one or more text messages to their cellular telephone advertising Defendant's goods and/or services, while the subject cellular telephone number was registered on the National Do-Not-Call list for more than 31 days.

51. Plaintiff is a member of the DNC Class.

52. Defendant and their employees or agents, Plaintiff's attorneys and their employees, the Judge to whom this action is assigned and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death, and/or emotional distress are excluded from the Classes.

53. The Classes are so numerous and geographically widespread that joinder is impracticable. Upon information and belief, as well as common experience of the size of automated dialing campaigns, there are easily more than one thousand persons in each Class.

54. Common questions of law and fact exist as to all members of the Classes and predominate over any questions solely affecting any individual member of the Classes, including Plaintiff. Such questions common to the Classes include, but are not limited to:

- a. Whether the text messages that are the subject of this lawsuit were sent using an "automatic telephone dialing system" as proscribed by the TCPA and applicable FCC regulations and orders;
- b. Whether the text messages that are the subject of this lawsuit were sent to individuals whose cellular telephone was registered on the national do not call registry.
- c. Whether the violation was negligent or willful.

55. Plaintiff will fairly and adequately protect the interests of the Classes. Plaintiff has no interests that might conflict with the interests of the Class. Plaintiff is interested in pursuing his

claims vigorously and has retained counsel competent and experienced in class and complex litigation.

56. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual actions would entail.

57. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

58. Defendant have acted on grounds generally applicable to the Classes, thereby making relief appropriate with respect to the Classes as a whole.

59. Prosecution of separate actions by individual members of the Classes, should they realize their rights have been violated, would likely create the risk of inconsistent or varying adjudications with respect to individual members of the Classes that would establish incompatible standards of conduct.

60. The identity of the Class Members is likely readily identifiable from Defendant's records, or the records of other person(s) involved with sending the text messages.

61. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable.

COUNT I
Violation of 47 U.S.C. § 227(b) and the Regulations Promulgated Thereunder
(On Behalf of Plaintiff and the No Consent to Text Class)

62. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

63. It is a violation of the TCPA, 47 U.S.C. §227(b) to call a person's cellular telephone using an automatic telephone dialing system. The TCPA also specifically prohibits the use of an unsolicited text messages to advertise the sale of goods and services. 47 U.S.C. § 227(b)(1)(B); 47 C.F.R. § 64.1200.

64. Defendant, or some person on their behalf, sent one or more text messages to plaintiff and others' cellular telephones, using an automatic telephone dialing system without Plaintiff's or the class members' prior express written consent.

65. The Defendant's text messages were negligently placed, or alternatively, willfully placed despite prior knowledge of the TCPA.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of herself and the class and against Defendant that provides the following relief:

- a. Statutory damages of \$500 per violation, and up to \$1,500 per violation if proven to be willful;
- b. A permanent injunction prohibiting Defendant from violating the TCPA in the future through calling cell phones using an automatic telephone dialing system and/or a prerecorded voice message;
- c. A declaration that Defendant used an automatic telephone dialing system and artificial or prerecorded voice, and violated the TCPA in using such for calls to the cell phones of plaintiff and the class; and
- d. Any other relief the Court finds just and proper.

COUNT II

Violation of 47 U.S.C. § 227(c) and the Regulations Promulgated Thereunder **(On Behalf of Plaintiff and the DNC Class)**

66. Plaintiff incorporates the foregoing paragraphs as if fully set forth herein.

67. It is a violation of the TCPA, 47 U.S.C. §227(c) to call a person who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200.

68. Defendant, or some person on its behalf, sent one or more marketing text messages to Plaintiff and others' cellular telephone numbers when said numbers had been registered on the national do-not-call registry for more than 31 days.

69. Such text messages were sent without Plaintiff's or the class members' express written consent.

70. The Defendant's text messages were negligently placed, or alternatively, willfully placed despite prior knowledge of the TCPA.

WHEREFORE, Plaintiff requests that the Court enter judgment in favor of herself and the class and against Defendant that provides the following relief:

- a. Statutory damages of \$500 per violation, and up to \$1,500 per violation if proven to be willful;
- b. A permanent injunction prohibiting Defendant from violating the TCPA in the future through calling cell phones registered with the national do-not-call registry;
- c. A declaration that Defendant made calls to numbers registered with the national do-not-call registry, and violated the TCPA in making such calls to the cell phones of Plaintiff and the class; and
- d. Any other relief the Court finds just and proper.

JURY DEMAND

71. Plaintiff demands trial by jury.

Dated: September 19, 2018

Respectfully submitted,

By: /s/ Jibrael S. Hindi
Jibrael S. Hindi, Esq.
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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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS CESAR PINEDA, individually and on behalf of all others similarly situated. DEFENDANTS TELECLARO, LLC. (b) County of Residence of First Listed Plaintiff Miami-Dade (EXCEPT IN U.S. PLAINTIFF CASES) County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED. Attorneys (If Known) The Law Office of Jibrael S. Hindi, PLLC, 610 SE 6th St., Suite 1744 Fort Lauderdale FL, 33301. (954)907-1136 (d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

II. BASIS OF JURISDICTION (Place an "X" in One Box Only) [] 1 U.S. Government Plaintiff [X] 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 Citizen of This State [] 1 [] 1 Incorporated or Principal Place of Business In This State Citizen of Another State [] 2 [] 2 Incorporated and Principal Place of Business In Another State Citizen or Subject of a Foreign Country [] 3 [] 3 Foreign Nation [] 4 [] 4 [] 5 [] 5 [] 6 [] 6

IV. NATURE OF SUIT (Place an "X" in One Box Only) CONTRACT: [] 110 Insurance [] 120 Marine [] 130 Miller Act [] 140 Negotiable Instrument [] 150 Recovery of Overpayment & Enforcement of Judgment [] 151 Medicare Act [] 152 Recovery of Defaulted Student Loans (Excl. Veterans) [] 153 Recovery of Overpayment of Veteran's Benefits [] 160 Stockholders' Suits [] 190 Other Contract [] 195 Contract Product Liability [] 196 Franchise PERSONAL INJURY: [] 310 Airplane [] 315 Airplane Product Liability [] 320 Assault, Libel & Slander [] 330 Federal Employers' Liability [] 340 Marine [] 345 Marine Product Liability [] 350 Motor Vehicle [] 355 Motor Vehicle Product Liability [] 360 Other Personal Injury [] 362 Personal Injury - Med. Malpractice CIVIL RIGHTS: [] 440 Other Civil Rights [] 441 Voting [] 442 Employment [] 443 Housing/Accommodations [] 445 Amer. w/Disabilities - Employment [] 446 Amer. w/Disabilities - Other [] 448 Education PRISONER PETITIONS: Habeas Corpus: [] 463 Alien Detainee [] 510 Motions to Vacate Sentence Other: [] 530 General [] 535 Death Penalty [] 540 Mandamus & Other [] 550 Civil Rights [] 555 Prison Condition [] 560 Civil Detainee - Conditions of Confinement FORFEITURE/PENALTY: [] 625 Drug Related Seizure of Property 21 USC 881 [] 690 Other LABOR: [] 710 Fair Labor Standards Act [] 720 Labor/Mgmt. Relations [] 740 Railway Labor Act [] 751 Family and Medical Leave Act [] 790 Other Labor Litigation [] 791 Empl. Ret. Inc. Security Act SOCIAL SECURITY: [] 861 HIA (1395ff) [] 862 Black Lung (923) [] 863 DIWC/DIWW (405(g)) [] 864 SSID Title XVI [] 865 RSI (405(g)) FEDERAL TAX SUITS: [] 870 Taxes (U.S. Plaintiff or Defendant) [] 871 IRS-Third Party 26 USC 7609 OTHER STATUTES: [] 375 False Claims Act [] 376 Qui Tam (31 USC 3729 (a)) [] 400 State Reapportionment [] 410 Antitrust [] 430 Banks and Banking [] 450 Commerce [] 460 Deportation [] 470 Racketeer Influenced and Corrupt Organizations [] 480 Consumer Credit [] 490 Cable/Sat TV [] 850 Securities/Commodities/Exchange [] 890 Other Statutory Actions [] 891 Agricultural Acts [] 893 Environmental Matters [] 895 Freedom of Information Act [] 896 Arbitration [] 899 Administrative Procedure Act/Review or Appeal of Agency Decision [] 950 Constitutionality of State Statutes

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

VI. RELATED/RE-FILED CASE(S) (See instructions): a) Re-filed Case [] YES [X] NO b) Related Cases [] YES [X] NO JUDGE: DOCKET NUMBER:

VII. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. §227 et seq. ("TCPA") LENGTH OF TRIAL via 2-3 days estimated (for both sides to try entire case)

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

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE DATE September 19, 2018 SIGNATURE OF ATTORNEY OF RECORD

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.

Refiled (3) Attach copy of Order for Dismissal of Previous case. Also complete VI.

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.

Remanded from Appellate Court. (8) Check this box if remanded from Appellate Court.

VI. Related/Refiled Cases. This section of the JS 44 is used to reference related pending cases or re-filed cases. Insert the docket numbers and the corresponding judges name for such cases.

VII. 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

VIII. 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.

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

Southern District of Florida

CESAR PINEDA,
individually and on behalf of all
others similarly situated

Plaintiff(s)

v.

TELECLARO, LLC.

Defendant(s)

Civil Action No. 1:18cv23854

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TELECLARO, LLC.
R/A: MARTORELL'S OFFICE CORP
11046 W FLAGLER ST
MIAMI, FL 33174

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: The Law Offices of Jibrael S. Hindi, PLLC. 110 SE 6th St., Suite 1744, Fort Lauderdale, FL 33301. Phone: (844)542-7235 Email: jibrael@jibraellaw.com Fax: (855)529-9540

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. 1:18cv23854

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:

Print

Save As...

Reset

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Teleclaro Sent 'At Least One-Hundred Thousand' Illegal Marketing Texts](#)
