

IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

JARVARIUS PUCKETT, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WESTERN EXPRESS, INC.

Defendant.

Case No.

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Plaintiff, Jarvarius Puckett (“Plaintiff”), on behalf of himself and all others similarly situated, states as follows for his class action complaint against Defendant, Western Express, Inc. (“Defendant”), alleges upon personal knowledge as to HIS own actions, and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. As the Supreme Court has explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

2. The Plaintiff Jarvarius Puckett alleges that Western Express, Inc. (“Defendant” or “Western Express”) made pre-recorded calls to his telephone numbers with respect to the Plaintiff and putative class members.

PARTIES

3. Plaintiff, Jarvarius Puckett, is a natural person and citizen of Griffin, GA.

4. Defendant, Western Express, Inc. is a corporation residing and operating in this state.

JURISDICTION & VENUE

5. This Court has general jurisdiction over this action under T.C.A. § 16-10-101.

6. This Court has personal jurisdiction over Defendant resides and operates in this state.

7. Venue is proper in this Court under T.C.A. § 20-4-101 because Western Express, Inc. resides in Davidson County, and the cause of action arose in this County.

FACTUAL ALLEGATIONS

8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the voice industry. In so doing, Congress recognized that “[u]nrestricted voice . . . can be an intrusive invasion of privacy[,]” and found that federal legislation was needed because “telemarketers [could] evade [state-law] prohibitions through interstate operations.” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012) (citations omitted).

9. The TCPA regulates, among other things, the use of a pre-recorded message to make calls or send pre-recorded calls. *See* 47 U.S.C. § 227, *et seq.*; *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

10. Specifically, the TCPA prohibits the use of a pre-recorded message to a wireless number in the absence of an emergency or the prior express written consent of the called party. *See* 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(2); *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rcd. 1830, 1831 (F.C.C. 2012).

11. Plaintiff's cellular telephone number is (404) 980-XXXX.

12. The Plaintiff never consented to receive pre-recorded calls from the Defendant.

13. The Plaintiff never did any business with the Defendant.

14. Despite that, the Defendant made pre-recorded voice calls to the Plaintiff between July 2022 and May 2023.

15. The call started with a pre-recorded message along the lines of:

Hi, interested in making some of the highest pay in the industry? Western Express is now offering up to \$80,000 per year for solo drivers, up to \$130,000 per year for training and up to \$200,000 or more per year for teams. To learn more and get started, give us a call at (888) 728-4144.

16. The call was clearly pre-recorded because (a) the voice sounded like a robot; (b) there was a delay prior to the message being played; (c) the tone of the recording was monotonous like a robot (d) the message was not personalized.

17. Furthermore, other individuals have complained about receiving similar robocalls. *See e.g.* <https://directory.youmail.com/phone/888-728-4144>.

18. The Plaintiff did not provide his consent to receive the pre-recorded call.

19. The call invaded the Plaintiff's privacy.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action on behalf of classes of all other persons or entities similarly situated throughout the United States.

21. The class of persons Plaintiff propose to represent is tentatively defined as:

All persons (1) whose telephone numbers were assigned to a cellular telephone, and (2) who were sent at least one pre-recorded call (3) despite not providing their telephone number to Western Express or any of its vendors.

This is referred to as the "Class".

22. Excluded from the Class are counsel, the Defendant, and any entities in which the Defendant have a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

23. The Class as defined above are identifiable through phone records and phone number databases.

24. The potential members of the Class number at least in the thousands.

25. Individual joinder of these persons is impracticable.

26. Plaintiff is a member of the Class.

27. There are questions of law and fact common to Plaintiff and to the proposed Class, including but not limited to the following:

(a) whether Defendant systematically made pre-recorded calls to class members;

(b) whether Defendant made calls to Plaintiff and members of the Class without first obtaining prior express written consent to make the calls;

(c) whether Defendant's conduct constitutes a violation of the TCPA; and

(d) whether members of the Class are entitled to treble damages based on the wilfulness of Defendant's conduct.

28. Plaintiff's claims are typical of the claims of members of the Class.

29. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the Class, he will fairly and adequately protect the interests of the

Class, and he is represented by counsel skilled and experienced in class actions, including TCPA class actions.

30. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendant and/or its agents.

31. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case.

FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the TCPA Pre-recorded Class)

32. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

33. Defendant and/or its agents transmitted unwanted telephone calls to Plaintiff and the other members of the TCPA Pre-recorded No Consent Class using a pre-recorded voice message.

34. These pre-recorded voice calls were made *en masse* without the prior express written consent of the Plaintiff and the other members of the TCPA Pre-recorded Class

35. The Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendant's conduct, Plaintiff and the other members of the TCPA Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- A. Certification of the proposed Class;
- B. Appointment of Plaintiff as representatives of the Class;
- C. Appointment of the undersigned counsel as counsel for the Class;
- D. A declaration that Defendant and/or their affiliates, agents, and/or other related entities' actions complained of herein violate the TCPA;
- E. An award to Plaintiff and the Class of damages, as allowed by law; and
- F. Orders granting such other and further relief as the Court deems necessary, just, and proper.
- G. Trial by jury on all claims so triable.

Dated: May 29, 2024

Respectfully Submitted,

/s/ J. Gerard Stranch, IV
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**Pro hac vice forthcoming*

Attorneys for Plaintiff and Proposed Class