

1 Michael L. Greenwald (*to seek admission pro hac vice*)  
2 Greenwald Davidson Radbil PLLC  
3 5550 Glades Road, Suite 500  
4 Boca Raton, Florida 33431  
5 (561) 826-5477  
6 (561) 961-5684 (Fax)  
7 mgreenwald@gdrllawfirm.com

8 Counsel for Plaintiff and the proposed class

9 UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF ARIZONA

11 Erendira Ramirez, *on behalf of* )  
12 *herself and others similarly situated,* )  
13 )  
14 Plaintiff, )  
15 )  
16 v. )  
17 )  
18 Sears Brands, LLC, )  
19 )  
20 Defendant. )  
21 )  
22 )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )

Civil Action No.:

Jury Trial Demanded

CLASS ACTION COMPLAINT

Nature of this Action

1. Erendira Ramirez (“Plaintiff”) brings this class action against Sears Brands, LLC (“Defendant”), under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

2. Section 227(b)(1)(A)(iii) of the TCPA provides, in pertinent part:

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) 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—

\* \* \*

1 (iii) to any telephone number assigned to a paging service, cellular telephone  
2 service, specialized mobile radio service, or other radio common carrier  
3 service, or any service for which the called party is charged for the call,  
4 unless such call is made solely to collect a debt owed to or guaranteed by the  
United States.

5 3. Upon information and good faith belief, Defendant routinely violates 47  
6 U.S.C. § 227(b)(1)(A)(iii) by using an automatic telephone dialing system and an artificial  
7 or prerecorded voice to place non-emergency calls to telephone numbers assigned to a  
8 cellular telephone service, without prior express consent, in that it places autodialed calls,  
9 accompanied by an artificial or prerecorded voice, to wrong or reassigned telephone  
10 numbers.  
11

### 12 **Jurisdiction and Venue**

13  
14 4. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and  
15 28 U.S.C. § 1331.  
16

17 5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as a  
18 portion of the events giving rise to this action occurred in this district, and as Defendant  
19 transacts business in this district.  
20

### 21 **Parties**

22 6. Plaintiff is a natural person who at all relevant times resided in Apache  
23 Junction, Arizona.  
24

25 7. Defendant is an entity headquartered in Hoffman Estates, Illinois.

26 8. Defendant engages in the retail and online retail of home appliances in the  
27 United States and internationally. It sells auto products; baby products; clothing for men,  
28 women, girls, and boys; electronics; fitness and sports products; home products; jewelry;

1 outdoor products; shoes; tools; toys; Christmas and gift products; parts and services; and  
2 other products.<sup>1</sup>

### 3 **Factual Allegations**

4  
5 9. Beginning in 2018, Defendant placed a number of calls to Plaintiff's cellular  
6 telephone number—(480)-XXX-3275.

7  
8 10. Plaintiff is the subscriber to, and pays the monthly bill for, her cellular  
9 telephone number.

10 11. Plaintiff has had the same cellular telephone number since 2015.

11  
12 12. Defendant placed at least one call to Plaintiff's cellular telephone number on  
13 May 1, 2018, May 8, 2018, and May 15, 2018.

14  
15 13. Defendant placed its calls to Plaintiff's cellular telephone number from (888)  
16 710-8432, a telephone number assigned to Defendant.

17  
18 14. Upon placing an outbound call to telephone number (888) 710-8432, a  
19 message states, "Thank you for calling Sears..."

20  
21 15. Upon information and good faith belief, Defendant's records will show  
22 additional calls it placed, or caused to be placed, to Plaintiff's cellular telephone number  
23 by using an automatic telephone dialing system or an artificial or prerecorded voice.

24  
25 16. Each of Defendant's calls to Plaintiff's cellular telephone number was  
26 accompanied by an artificial or prerecorded voice message.

27  
28 17. In particular, Defendant left a prerecorded voice message on Plaintiff's  
cellular telephone voice mail service on May 1, 2018, with the following message:

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<sup>1</sup> <https://www.bloomberg.com/research/stocks/private/snapshot.asp?privcapid=24886681>  
(last visited June 4, 2018)

1 Hi, this is Sears Parts Direct. We are not able to process your scheduled water  
2 filter subscription automatic recorder because the credit card on file has  
3 expired or is invalid. To reactivate your subscription and resume receiving  
4 the automatic reorders, please contact us at 1-888-710-8432 to update your  
5 information. Your subscription will resume immediately after the update and  
6 you can continue to enjoy clean, fresh water without interruption. Again, that  
7 number is 1-888-710-8432. Thank you, looking forward to hearing from you  
8 soon.

9 Hi, this is Sears Parts Direct. We are not able to process your scheduled water  
10 filter subscription automatic recorder because the credit card on file has  
11 expired or is invalid. To reactivate your subscription and resume receiving  
12 the automatic reorders, please contact us at 1-888-710-8432 to update your  
13 information. Your subscription will resume immediately after the update and  
14 you can continue to enjoy clean, fresh water without interruption. Again, that  
15 number is 1-888-710-8432. Thank you, looking forward to hearing from you  
16 soon.

17 18. On May 8, 2018, Defendant left a prerecorded voice message on Plaintiff's  
18 cellular telephone voice mail service, with the following message:

19 or is invalid. To reactivate your subscription and resume receiving the  
20 automatic reorders, please contact us at 1-888-710-8432 to update your  
21 information. Your subscription will resume immediately after the update and  
22 you can continue to enjoy clean, fresh water without interruption. Again, that  
23 number is 1-888-710-8432. Thank you, looking forward to hearing from you  
24 soon.

25 19. In addition, Plaintiff answered one of Defendant's calls, and was greeted with  
26 an artificial or prerecorded voice message.

27 20. Defendant's calls were intended for a recipient other than Plaintiff.

28 21. On June 4, 2018, Plaintiff called (888) 710-8432 for the purpose of informing  
Defendant that it was calling the wrong number and to stop calling. However, Plaintiff was  
unable to do so as she was placed on hold and, despite waiting for seven minutes, was not  
transferred to a live operator.

1           22. Upon information and good faith belief, and in light of the frequency,  
2 number, nature, and character of the calls at issue, including the use of an artificial or  
3 prerecorded voice, Defendant placed its calls to Plaintiff's cellular telephone number by  
4 using an automatic telephone dialing system.  
5

6           23. Upon information and good faith belief, and in light of the frequency,  
7 number, nature, and character of the calls at issue, including the use of an artificial or  
8 prerecorded voice, Defendant placed its calls to Plaintiff's cellular telephone number by  
9 using equipment which has the capacity (i) to store or produce telephone numbers to be  
10 called, using a random or sequential number generator, and (ii) to dial such numbers.  
11

12           24. Upon information and good faith belief, and in light of the frequency,  
13 number, nature, and character of the calls at issue, including the use of an artificial or  
14 prerecorded voice, Defendant placed its calls to Plaintiff's cellular telephone number by  
15 using (i) an automated dialing system that uses a complex set of algorithms to automatically  
16 dial consumers' telephone numbers in a manner that "predicts" the time when a consumer  
17 will answer the phone and a person will be available to take the call, or (ii) equipment that  
18 dials numbers and, when certain computer software is attached, also assists persons in  
19 predicting when a sales agent will be available to take calls, or (iii) hardware, that when  
20 paired with certain software, has the capacity to store or produce numbers and dial those  
21 numbers at random, in sequential order, or from a database of numbers, or (iv) hardware,  
22 software, or equipment that the FCC characterizes as a predictive dialer through the  
23 following, and any related, reports and orders, and declaratory rulings: *In the Matter of*  
24 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 17  
25 *FCC Rcd* 17459, 17474 (September 18, 2002); *In the Matter of Rules and Regulations*  
26  
27  
28

1 *Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14092-  
2 93 (July 3, 2003); *In the Matter of Rules and Regulations Implementing the Telephone*  
3 *Consumer Protection Act of 1991*, 23 FCC Rcd 559, 566 (Jan. 4, 2008); *In the Matter of*  
4 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23  
5 FCC Rcd 559, 566 (Jan. 4, 2008).

7 25. Defendant used an artificial or prerecorded voice to leave at least two voice  
8 messages on Plaintiff's cellular telephone voice mail service.

10 26. Upon information and good faith belief, Defendant placed its calls to  
11 Plaintiff's cellular telephone number for non-emergency purposes.

12 27. Upon information and good faith belief, Defendant placed its calls to  
13 Plaintiff's cellular telephone number voluntarily.

15 28. Upon information and good faith belief, Defendant placed the calls to  
16 Plaintiff's cellular telephone number under its own free will.

17 29. Upon information and good faith belief, Defendant had knowledge that it  
18 was using an automatic telephone dialing system or an artificial or prerecorded voice to  
19 place its calls to Plaintiff's cellular telephone number.

21 30. Upon information and good faith belief, Defendant intended to use an  
22 automatic telephone dialing system or an artificial or prerecorded voice to place its calls to  
23 Plaintiff's cellular telephone number.

25 31. Plaintiff is not, nor was, one of Defendant's customers.

26 32. Plaintiff does not, nor did, have a business relationship with Defendant.

27 33. Plaintiff did not have a "water filter subscription" with Defendant.

28 34. Plaintiff never had her "credit card on file" with Defendant.

1 35. Plaintiff did not give Defendant prior express consent to place calls to her  
2 cellular telephone number by using an automatic telephone dialing system or an artificial  
3 or prerecorded voice.

4 36. Upon information and good faith belief, Defendant maintains business  
5 records that show all calls it placed to Plaintiff's cellular telephone number.  
6

7 37. Plaintiff suffered actual harm as a result Defendant's calls at issue in that she  
8 suffered an invasion of privacy, an intrusion into her life, and a private nuisance.  
9

10 38. As well, Defendant's calls at issue unnecessarily tied up Plaintiff's cellular  
11 telephone line.

12 39. Upon information and good faith belief, Defendant, as a matter of pattern and  
13 practice, uses an automatic telephone dialing system or an artificial or prerecorded voice  
14 to place calls to telephone numbers assigned to a cellular telephone service, absent prior  
15 express consent.  
16

### 17 **Class Action Allegations**

18 40. Plaintiff brings this action under Federal Rule of Civil Procedure 23, and as  
19 a representative of the following class:  
20

21 All persons and entities throughout the United States (1) to whom Sears  
22 Brands, LLC placed calls, (2) directed to a number assigned to a cellular  
23 telephone service, (3) by using an automatic telephone dialing system or an  
24 artificial or prerecorded voice, (4) within the four years preceding the date of  
25 this complaint through the date of class certification, (5) absent prior express  
26 consent—in that the called party was not a Sears Brands, LLC customer.

27 41. Excluded from the class are Defendant, Defendant's officers and directors,  
28 members of their immediate families and their legal representatives, heirs, successors, or  
assigns, and any entity in which Defendant has or had a controlling interest.

1           42.    The proposed class is so numerous that, upon information and belief, joinder  
2 of all members is impracticable.

3           43.    The exact number of members of the class is unknown to Plaintiff at this time  
4 and can only be determined through appropriate discovery.

5           44.    The proposed class is ascertainable because it is defined by reference to  
6 objective criteria.

7           45.    In addition, and upon information and belief, the cellular telephone numbers  
8 of all members of the class can be identified in business records maintained by Defendant  
9 and third parties.

10          46.    Plaintiff's claims are typical of the claims of the members of the class  
11 because all of the class members' claims originate from the same conduct, practice and  
12 procedure on the part of Defendant, and Plaintiff possesses the same interests and has  
13 suffered the same injuries as each class member.

14          47.    Like all members of the proposed class, Plaintiff received autodialed calls  
15 from Defendant, without her consent, on her cellular telephone, in violation of 47 U.S.C.  
16 § 227.

17          48.    Plaintiff will fairly and adequately protect the interests of the members of the  
18 class and has retained counsel experienced and competent in class action litigation.

19          49.    Plaintiff has no interests that are irrevocably contrary to or in conflict with  
20 the members of the class that she seeks to represent.

21          50.    A class action is superior to all other available methods for the fair and  
22 efficient adjudication of this controversy, since joinder of all members is impracticable.  
23  
24  
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1 51. Furthermore, as the damages suffered by individual members of the class  
2 may be relatively small, the expense and burden of individual litigation make it  
3 impracticable for the members of the class to individually redress the wrongs done to them.

4  
5 52. There will be little difficulty in the management of this action as a class  
6 action.

7 53. Issues of law and fact common to the members of the class predominate over  
8 any questions that may affect only individual members, in that Defendant has acted on  
9 grounds generally applicable to the class.  
10

11 54. Among the issues of law and fact common to the class are:

- 12 a. Defendant's violations of the TCPA;
- 13 b. Defendant's use of an automatic telephone dialing system, as defined by the  
14 TCPA, to place calls to cellular telephone numbers;
- 15 c. Defendant's use of an artificial or prerecorded voice in connection with  
16 placing calls to cellular telephone numbers;
- 17 d. Defendant's practice of calling wrong or reassigned cellular telephone  
18 numbers; and
- 19 e. the availability of statutory damages.  
20  
21  
22

23 55. Absent a class action, Defendant's violations of the law will be allowed to  
24 proceed without a full, fair, judicially supervised remedy.  
25

26 **Count I**  
27 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

28 56. Plaintiff repeats and re-alleges each and every factual allegation contained in  
paragraphs 1-55.

1 57. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by utilizing an automatic  
2 telephone dialing system and an artificial or prerecorded voice to place calls to Plaintiff's  
3 cellular telephone number, without her consent.

4  
5 58. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A)(iii),  
6 Plaintiff and the members of the class are entitled to damages in an amount to be proven at  
7 trial.

8  
9 **Trial by Jury**

10 59. Plaintiff is entitled to, and demands, a trial by jury.

11 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 12  
13 a) Determining that this action is a proper class action;
- 14 b) Designating Plaintiff as a class representative under Federal Rule of Civil  
15 Procedure 23;
- 16  
17 c) Designating Plaintiff's counsel as class counsel under Federal Rule of Civil  
18 Procedure 23;
- 19 d) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(a)(iii);
- 20  
21 e) Enjoining Defendant from continuing to place calls to Plaintiff's cellular  
22 telephone number, and from continuing to place calls to the cellular  
23 telephone numbers of members of the proposed class without prior express  
24 consent;
- 25  
26 f) Awarding Plaintiff and the class damages under 47 U.S.C. § 227(b)(3)(B);
- 27  
28 g) Awarding Plaintiff and the class treble damages under 47 U.S.C. § 227(b)(3);

- 1 h) Awarding Plaintiff and the class reasonable attorneys' fees, costs, and  
2 expenses under Rule 23 of the Federal Rules of Civil Procedure;  
3  
4 i) Awarding Plaintiff and the members of the class any pre-judgment and post-  
5 judgment interest as may be allowed under the law; and  
6  
7 j) Awarding such other and further relief as the Court may deem just and  
8 proper.  
9

10 Dated: June 7, 2018

Respectfully submitted,

11 /s/ Michael L. Greenwald

12 Michael L. Greenwald\*

13 Greenwald Davidson Radbil PLLC

14 *\*to seek admission pro hac vice*  
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UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

## Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff(s): Erendira Ramirez**

**Defendant(s): Sears Brands, LLC**

County of Residence: Maricopa

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

**Michael Greenwald  
Greenwald Davidson Radbil PLLC  
5550 Glades Road, Suite 500  
Boca Raton, Florida 33431  
5619101329**

II. Basis of Jurisdiction:

**3. Federal Question (U.S. not a party)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- N/A  
Defendant:- N/A

IV. Origin :

**1. Original Proceeding**

V. Nature of Suit:

**890 Other Statutory Actions**

VI. Cause of Action:

**47 U.S.C. 227 -- Telephone Consumer Protection Act**

VII. Requested in Complaint

Class Action: **Yes**  
Dollar Demand:  
Jury Demand: **Yes**

VIII. This case is not related to another case.

**Signature: Michael L. Greenwald**

**Date: 6/7/18**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Sears Placed Unlawful Robocalls to Woman's Cell Phone Without Consent](#)

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