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COMMONWEALTH OF MASSACHUSETTS

**SUPERIOR COURT DEPARTMENT
BUSINESS LITIGATION SESSION**

ROXANNE REYES, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

1-800-FLOWERS.COM, INC. and
INTERACTIONS LLC,

Defendants.

C.A. No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Roxanne Reyes (“Plaintiff”), by and through her attorneys, makes the following allegations pursuant to the investigation of her counsel and based upon information and belief, except as to allegations specifically pertaining to herself and her counsel, which are based on personal knowledge, against Defendants 1-800-FLOWERS.com, Inc. (“1-800-Flowers”) and Interactions LLC (“Interactions”) (collectively, “Defendants”).

NATURE OF THE ACTION

1. This is a class action suit brought against Defendant Interactions LLC (“Interactions”) and Defendant 1-800-FLOWERS.com, Inc. (“1-800-Flowers”) (collectively, “Defendants”) for intercepting¹ 1-800-FLOWERS phone line² callers’ (“Callers”) wire and oral communications made during their calls (“Calls”).

¹ With respect to Interactions, defined to mean “**secretly hear, [and] secretly record . . . the contents of any wire oral oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication.**” With respect to 1-800-Flowers, defined to mean “**aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication[.]**” M.G.L.A. 272, § 99(B)(4) (emphasis added).

² 1-800-356-9377 (hereinafter, the “Phone Line”)

2. In or around 2019,³ Defendant 1-800-Flowers rolled out an intelligent virtual assistant system (“IVAS” or “System”) that uses artificial intelligence (“AI” akin to Amazon’s Alexa, Apple’s Siri, Google’s Assistant and Microsoft’s Cortana) to respond to Callers’ requests (i.e., flowers, gifts, and other merchandise orders), answer Callers’ questions, and address additional Caller needs via the Phone Line.

3. 1-800-Flowers employs Interactions, a third party, to provide the System on the Phone Line. Callers’ wire and oral communications with 1-800-Flowers on the Phone Line are routed through Interactions’ System.

4. Interactions thereby intercepts the contents of Callers’ wire and oral communications in real time.

5. 1-800-Flowers thereby also engages in the interception of Callers’ wire and oral communications in real time.

6. By doing so, Defendants have violated M.G.L.A. 272, § 99 (the “Massachusetts Wiretapping Statute”).

7. Plaintiff brings this action on behalf of all persons whose wire and/or oral communications on the Phone Line were intercepted by Interactions and 1-800-Flowers.

PARTIES

8. Plaintiff Roxanne Reyes is a citizen of Massachusetts who resides in Worcester, Massachusetts. Ms. Reyes has called the Phone Line and interacted with the System to place multiple orders from 1-800-Flowers, including but not limited to an August 18, 2021 order for a ribbon and Healing Tears bouquet. Ms. Reyes was in Massachusetts each time she called the Phone Line. During each Call, the contents of Ms. Reyes’ wire and oral communications were

³ <https://www.interactions.com/press-releases/interactions-delivers-keynote-with-1-800-flowers-at-customer-service-summit/>.

intercepted by and disclosed to Defendant Interactions. Ms. Reyes was unaware at the time of the Calls that her wire and oral communications were being intercepted in real time and would be disclosed to Interactions. Ms. Reyes was also unaware at the time of the Calls that 1-800-Flowers was secretly aiding Interactions to intercept the content of her wire and oral communications. Ms. Reyes did not consent to any of Defendants' practices.⁴

9. Defendant 1-800-Flowers.com Inc. ("1-800-Flowers") is a Delaware corporation with its principal places of business in Jericho, New York. Defendant 1-800-Flowers partners with multiple brick and mortar flower stores located throughout Massachusetts.⁵

10. Defendant Interactions LLC ("Interactions") is a Delaware corporation with its principal place of business in Franklin, Massachusetts.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this matter pursuant to M.G.L.A. 212, §§ 3 and 4.

12. This Court has personal jurisdiction over Defendant 1-800-Flowers pursuant to M.G.L.A. 223A § 3(a), (b), and (e) because Defendant 1-800-Flowers regularly transacts business, contracts to supply services, and uses real property in Massachusetts.

13. This Court has personal jurisdiction over Defendant Interactions pursuant to M.G.L.A. 223A § 2 because Defendant Interactions has its principal place of business in Massachusetts and is therefore domiciled in Massachusetts.

⁴ The Phone Line merely states: "Your call may be recorded for quality assurance purposes." It does not provide notice that Interactions, or any other third party, is listening in on the Phone Line.

⁵<https://reviewed.usatoday.com/home-outdoors/features/1-800-flowers-review-how-to-order-flowers-for-valentines-day> ("1-800-Flowers partners with local florists around the globe to deliver pre-designed bouquets to its customers. If you opt for same-day local florist delivery, your bouquet will be arranged and delivered by a local florist.").

14. Venue is proper in this County because Plaintiff resides in this County and Defendants do business in this County. Further, a substantial part of the events or omissions giving rise to Plaintiff's claims occurred in this County. This County is the location of the Calls that gave rise to Plaintiff's claims and the location of Plaintiff's primary injury.

15. Venue is proper in the Business Litigation Session ("BLS"), pursuant to Superior Court Administrative Directive No. 17-1, because this case is complex and is brought as a class action which will need substantial case management.

FACTUAL ALLEGATIONS

16. Defendant Interactions is the developer and seller of an intelligent virtual assistant system ("IVAS" or "System") that uses artificial intelligence ("AI" akin to Amazon's Alexa, Apple's Siri, Google's Assistant and Microsoft's Cortana).

17. Interactions' System has been implemented on the phone lines of numerous third parties, including the eponymous 1-800-FLOWERS (1-800-356-9377) Phone Line of 1-800-Flowers.

18. There, the System responds to Callers' requests (i.e., flowers, gifts, and other merchandise orders), answers Callers' questions, and addresses additional Caller needs during Calls.

19. To accomplish this, during Callers' Calls to the Phone Line, the System intercepts the contents of Callers' wire and oral communications in real time.

20. Interactions does so for three reasons.

21. First, if during a Call the System does not understand a word said or utterance made by a Caller, a recording snippet of that word or utterance is directed to a human listener to verify what was said, in real time. The human listener then confirms the word or utterance for the System, while the Call is still ongoing.

22. Second, Call recordings may be used after a Call is completed for quality control purposes. During this process, a human listener will review the audio recordings to evaluate any problems encountered during a Call.

23. Third, this helps to improve the System's automated speech recognition functionality. Over time, the input provided by human listeners performing quality control helps the System to better understand Callers.

24. In addition, Interactions retains a transcript of Callers' spoken utterances, as understood by the System, for each Call.

25. Interactions thereby intercepts Callers' wire and oral communications in real time.

26. 1-800-Flowers thereby secretly aids another party (Interactions) in intercepting Callers' wire and oral communications in real time.

CLASS REPRESENTATION ALLEGATIONS

27. Plaintiff seeks to represent a class defined as

All persons who called the 1-800-FLOWERS (1-800-356-9377) phone line whose wire and/or oral communications passed through Interactions' intelligent virtual assistant system. (The "Class").

28. Plaintiff also seeks to represent a subclass defined as

All persons located in the Commonwealth of Massachusetts who called the 1-800-FLOWERS (1-800-356-9377) phone line whose wire and/or oral communications passed through Interactions' intelligent virtual assistant system. (The "Massachusetts Subclass").

29. Members of the Class and Massachusetts Subclass are so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class and Massachusetts Subclass number in the thousands. The precise number of Class members and their identities are unknown to Plaintiff at this time but may be determined through discovery.

Class members may be notified of the pendency of this action by mail and/or publication through the records of Defendants.

30. Common questions of law and fact exist as to all Class members and Massachusetts Subclass members, and predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to, whether Defendants' conduct as alleged herein violates M.G.L.A. 272, § 99 (the "Massachusetts Wiretapping Statute") and whether Plaintiff and Class members are entitled to actual and/or statutory damages for the aforementioned violations.

31. The claims of the named Plaintiff are typical of the claims of the Class and Massachusetts Subclass in that the named Plaintiff, like all other Class members, placed a Call to the Phone Line and had her wire and/or oral communications intercepted by and disclosed to Interactions through the use of Interactions' System.

32. Plaintiff is an adequate representative of the Class and Massachusetts Subclass because her interests do not conflict with the interests of the Class members she seeks to represent, has retained competent counsel experienced in prosecuting class actions, and intends to prosecute this action vigorously. The interests of Class members will be fairly and adequately protected by Plaintiff and her counsel.

33. The class mechanism is superior to other available means for the fair and efficient adjudication of the claims of Class members and Massachusetts Subclass members. Each individual Class member may lack the resources to undergo the burden and expense of individual prosecution of the complex and extensive litigation necessary to establish Defendants' liability. Individualized litigation increases the delay and expense to all parties and multiplies the burden on the judicial system presented by the complex legal and factual issues of this case. Individualized litigation also presents a potential for inconsistent or contradictory judgments. In

contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court on the issue of Defendants' liability. Class treatment of the liability issues will ensure that all claims and claimants are before this Court for consistent adjudication of the liability issues.

COUNT I
Violation of M.G.L.A. 272, § 99

34. Plaintiff incorporates by reference and re-alleges each and every allegation set forth above as though fully set forth herein.

35. Plaintiff Reyes brings this claim individually and on behalf of the Class and the Massachusetts Subclass.

36. M.G.L.A. 272, § 99 (the "Massachusetts Wiretapping Statute") prohibits the interception, attempted interception, use, or disclosure of any wire or oral communications which violates personal, property, or privacy interests. M.G.L.A. 272, § 99(C).

37. The express legislative purpose of M.G.L.A. 272, § 99's unequivocal ban on secret recordings is to protect citizens' privacy. In fact, the Massachusetts Wiretap Statute's preamble states that secret recording "pose[s] grave dangers to the privacy of all citizens[.]" M.G.L.A. 272, § 99(A).

38. Any aggrieved person whose oral or wire communications were intercepted, disclosed, or used except as permitted or authorized by the Massachusetts Wiretap Statute or whose personal or property interests or privacy were violated by means of an interception except as permitted or authorized by the Massachusetts Wiretap Statute shall have a civil cause of action against any person who so intercepts, discloses, or uses such communications or who so violates his personal, property, or privacy interest, and shall be entitled to recover from any such person actual damages but not less than liquidated damages computed at the rate of \$100 per day for each

day of violation or \$1000, whichever is higher; punitive damages; and a reasonable attorney's fee and other litigation disbursements reasonably incurred. M.G.L.A. 272, § 99(Q).

39. "Interception" means to "secretly hear, secretly record, or aid another to secretly hear or secretly record the contents of any wire or oral communication through the use of any intercepting device by any person other than a person given prior authority by all parties to such communication." M.G.L.A. 272, § 99(B)(4).

40. "Contents" when "used with respect to any wire or oral communication, means any information concerning the identity of the parties to such communication or the existence, contents, substance, purport, or meaning of that communication." M.G.L.A. 272, § 99(B)(5).

41. "Intercepting device" means "any device or apparatus which is capable of transmitting, receiving, amplifying, or recording a wire or oral communication other than a hearing aid or similar device which is being used to correct subnormal hearing to normal and other than any telephone or telegraph instrument, equipment, facility, or a component thereof, (a) furnished to a subscriber or user by a communications common carrier in the ordinary course of its business under its tariff and being used by the subscriber or user in the ordinary course of its business; or (b) being used by a communications common carrier in the ordinary course of its business." M.G.L.A. 272, § 99(B)(3).

42. "Wire communication" means "**any communication** made in whole or in part through the use of facilities for the transmission of communications by the **aid of wire, cable, or other like connection** between the point of origin and the point of reception." M.G.L.A. 272, § 99(B)(1) (emphasis added).

43. "Person" means "any individual, partnership, association, joint stock company, trust, or corporation, whether or not any of the foregoing is an officer, agent or employee of the United States, a state, or a political subdivision of a state." M.G.L.A. 272, § 99(B)(13).

44. “Use” includes “willfully us[ing] or attempt[ing] to use the contents of any wire or oral communication, knowing that the information was obtained through interception.”

M.G.L.A. 272, § 99(C)(3)(b).

45. Defendants 1-800-Flowers and Interactions each are a “person” for purposes of the Massachusetts Wiretap Statute because they are corporations.

46. The Interactions System implemented on the 1-800-Flowers Phone Line is an “intercepting device,” within the meaning of the Statute. M.G.L.A. 272, § 99(B)(3).

47. Interactions intentionally uses its System to automatically and secretly intercept Callers’ wire and/or oral communications made during Calls to the Phone Line in real time.

48. 1-800-Flowers intentionally aids Interactions in using its System to automatically and secretly intercept Callers’ wire and/or oral communications made during Calls to the Phone Line in real time.

49. Plaintiff Reyes’ and Class members’ intercepted Phone Line Call speech constitutes the “contents” of “wire communications” and/or “oral communications” within the meaning of the Massachusetts Wiretap Statute. M.G.L.A. 272, § 99(B)(1), (2), (5).

50. Plaintiff Reyes’ and Class members’ wire and/or oral communications were intercepted in real time.

51. Plaintiff Reyes and Class members did not consent to having their Call communications intercepted or wiretapped.

52. Interactions’ conduct violated M.G.L.A. 272, § 99 and therefore gives rise to a claim under M.G.L.A. 272, § 99(Q).

53. 1-800-Flowers’ conduct violated M.G.L.A. 272, § 99 and therefore gives rise to a claim under M.G.L.A. 272, § 99(Q).

54. Pursuant to M.G.L.A. 272, § 99 (Q), Plaintiff Reyes and Class members seek (1) the greater of actual damages and liquidated damages computed at the rate of \$100 per day for each violation or \$1,000, whichever is higher; (2) punitive damages; and (3) reasonable attorneys' fees and other litigation costs incurred.

55. Defendants' conduct is ongoing, and they continue to unlawfully intercept the communications of Plaintiff Reyes and Class members any time they call the Phone Line with the Interactions System enabled without their consent. Plaintiff Reyes and Class members are entitled to declaratory and injunctive relief to prevent future interceptions of their communications.

RELIEF DEMANDED

WHEREFORE, Plaintiff, individually and on behalf of all others similarly situated, seeks judgment against Defendants, as follows:

- a. For an order certifying the Class and Massachusetts Subclass, and naming Plaintiff as representatives of the Class and Plaintiff's attorneys as Class Counsel to represent the Class and Massachusetts Subclass;
- b. For an order declaring that Defendants' conduct violates the statute referenced herein;
- c. For an order finding in favor of Plaintiff and the Class and Massachusetts Subclass, on all counts asserted herein;
- d. For compensatory, statutory, and punitive damages in amounts to be determined by the Court and/or jury;
- e. For prejudgment interest on all amounts awarded;
- f. For an order of restitution and all other forms of equitable monetary relief;
- g. For an order enjoining Defendants from continuing the illegal practices detailed herein; and
- h. For an order awarding Plaintiff and the Class and Massachusetts Subclass their reasonable attorneys' fees and expenses and costs of suit.

JURY TRIAL DEMANDED

Plaintiff demands a trial by jury on all claims so triable.

Dated: November 2, 2023

Respectfully submitted,

BURSOR & FISHER, P.A.

By: /s/ Joel D. Smith
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [1-800-Flowers Secretly 'Wiretapped' Customer Calls Without Consent, Class Action Alleges](#)
