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11 Attorneys for Plaintiff,
12 Jay Rumpf

14 **UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

17 Jay Rumpf, *on behalf of himself*
18 *and all others similarly situated,*

19 Plaintiff,

20 v.

21 Prog Leasing, LLC d/b/a
22 Progressive Leasing; and DOES 1-
23 10, inclusive,

24 Defendants.
25
26
27

CASE NO.:

**CLASS ACTION COMPLAINT
FOR DAMAGES, INJUNCTIVE
RELIEF AND DECLARATORY
RELIEF PURSUANT TO 47 U.S.C. §
227, et seq. (TELEPHONE
CONSUMER PROTECTION ACT)**

Demand for Jury Trial

1 For his Class Action Complaint, Plaintiff, Jay Rumpf, by and through undersigned
2 counsel, pleading on his own behalf and on behalf of all others similarly situated, states
3 as follows:

4 **INTRODUCTION**

5 1. Plaintiff, Jay Rumpf (“Plaintiff”), brings this class action for damages, as
6 well as declaratory and injunctive relief, from the illegal actions of Prog Leasing, LLC
7 d/b/a Progressive Leasing (“Progressive” or “Defendant”). Defendant knowingly
8 and/or willfully placed automated calls to Plaintiff’s cellular phone in violation of the
9 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”).

10 2. The TCPA outlaws calling consumers with automated technology without
11 their “prior express consent.” 47 U.S.C. § 227(b)(1)(A). Such consent cannot be
12 ‘implied’ or ‘presumed’ through the provision of a telephone number by some third
13 party. Rather, prior *express* consent is that received directly from the “current
14 subscriber” or “customary user” of the phone number. *In re Rules and Regulations*
15 *Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling
16 and Order, CG Docket No. 02-278, FCC 15-72, at ¶ 72 (July 10, 2015) (“2015 FCC
17 Ruling”).

18 **PARTIES, JURISDICTION AND VENUE**

19 3. Plaintiff is, and at all times mentioned herein was, an adult individual
20 residing in Phoenix, Arizona.

21 4. Progressive is, and at all times mentioned herein was, a Delaware business
22 entity with a principal place of 256 West Data Drive, Draper, Utah 84020.

23 5. This Court has original jurisdiction over this matter pursuant to 28 U.S.C.
24 § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S. Ct. 740, 751-53 (2012).

25 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
26 Plaintiff resides and received the subject telephone calls in this judicial district.
27

ALLEGATIONS APPLICABLE TO ALL COUNTS

1
2 7. In the last four years, Defendant placed calls to Plaintiff’s cellular telephone
3 number, 480-xxx-5754.

4 8. Defendant placed calls to Plaintiff’s cellular telephone number from several
5 different numbers, including 701-989-7920, 207-480-3985, 312-525-9091, 208-497-
6 3612, 703-574-9800, and 520-635-2120.

7 9. Defendant placed its calls using an ‘automatic telephone dialing system’
8 (“autodialer”) and a ‘prerecorded voice,’ within the meaning of 47 U.S.C. § 227(b)(1).
9

10 10. When Plaintiff answered calls from Defendant, he was greeted with a pre-
11 recorded voice message stating “This is an important message from Progressive Leasing .
12 . . .” There was no live person to speak with on these calls, just a prerecorded voice
13 playing a message.

14 11. On other calls, Plaintiff would have to wait on the line through several
15 seconds of silence before a live representative came on the line.

16 12. When Plaintiff did not answer Defendant’s calls, Defendant left pre-
17 recorded voicemail stating “This is an important message from Progressive Leasing . . .
18 .” The voicemail were not delivered by a live person , but by a pre-recorded voice.

19 13. On one call from Defendant, Plaintiff waited on the line to speak with a live
20 representative. The representative indicated it was calling to reach someone other than
21 Plaintiff. Plaintiff advised he was not that person and instructed Progressive to stop
22 calling.

23 14. Defendant continued to place its autodialed calls to Plaintiff’s cellular
24 telephone.

25 15. Plaintiff does not have business with Defendant and never provided
26 Defendant his cellular telephone number or prior express consent to call or autodial it.

27 16. Plaintiff has not received any letters in the mail from Defendant.

1 17. Plaintiff was annoyed, frustrated, and inconvenienced by Progressive's
2 calls.

3 18. Defendant's calls distracted Plaintiff while he was driving.

4 19. Defendant's unwanted calls have invaded Plaintiff's cellular telephone.
5 Plaintiff has had to turn his phone on 'silent mode' to prevent being distracted.

6 20. The calls from Defendant to Plaintiff were not placed for "emergency
7 purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

8 **CLASS ACTION ALLEGATIONS**

9 **A. The Class**

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

12 22. Plaintiff represents, and is a member of the following classes:

13
14 **The "TCPA Class": (1) All persons within the United States (2) to
15 whose cellular telephone number (3) Defendant placed a non-
16 emergency telephone call (4) using an autodialer or prerecorded voice
(5) within four years of the complaint.**

17
18 **The "Revoke Class": (1) All persons within the United States (2) to
19 whose cellular telephone number (3) Defendant placed a non-
20 emergency telephone call (4) using an autodialer or prerecorded voice
21 (5) within four years of the complaint, (6) after said person instructed
22 Defendant to cease calling.**

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

27 **B. Numerosity**

28 24. Upon information and belief, Defendant has placed prerecorded or
29 artificial calls with ATDS to cellular telephone numbers belonging to thousands of

1 consumers throughout the United States without their prior express consent. The
2 members of the Classes, therefore, are believed to be so numerous that joinder of all
3 members is impracticable.

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

8 **C. Common Questions of Law and Fact**

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

- 12 a. Whether Defendant made non-emergency calls to Plaintiff and Class
13 members' cellular telephones using an artificial or prerecorded voice;
- 14 b. Whether Defendant made non-emergency calls to Plaintiff and the
15 Class members' cellular telephones using an autodialer;
- 16 c. Whether Defendant can meet its burden of showing it obtained prior
17 express consent to make each call;
- 18 d. Whether Defendant ignored Plaintiff and the Revoke Class's valid
19 requests to cease calling;
- 20 e. Whether Defendant's conduct was knowing and/or willful;
- 21 f. Whether Defendant is liable for damages, and the amount of such
22 damages; and
- 23 g. Whether Defendant should be enjoined from such conduct in the
24 future.

25 27. The common questions in this case are capable of having common
26 answers. If Plaintiff's claim that Defendant routinely places unauthorized automated
27

1 calls to telephone numbers assigned to cellular telephone services is accurate, Plaintiff
2 and the Class members will have identical claims capable of being efficiently
3 adjudicated and administered in this case.

4 **D. Typicality**

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

7 **E. Protecting the Interests of the Class Members**

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

12 **F. Proceeding Via Class Action is Superior and Advisable**

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

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

23 **COUNT I**

24 **Violations of the Telephone Consumer Protection Act,**
25 **47 U.S.C. § 227, et seq.**

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

1 33. Defendant placed multiple prerecorded or artificial calls to cellular
2 numbers belonging to Plaintiff and the other members of the Classes without their
3 prior express consent.

4 34. Each of the aforementioned calls by Defendant constitutes a negligent
5 violation of the TCPA.

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

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

10 37. Plaintiff and Class members are also entitled to and do seek a declaration
11 that:

- 12 • Defendant violated the TCPA;
- 13 • Defendant used prerecorded voices and/or artificial voices on its calls to
14 Plaintiff and the Classes; and

15 Defendant placed calls to the Plaintiff and the Classes without prior express
16 consent.

17 **COUNT II**
18 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act,**
19 **47 U.S.C. § 227, et seq.**

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

22 39. Defendant knowingly and/or willfully placed multiple prerecorded or
23 artificial calls to cellular numbers belonging to Plaintiff and the other members of the
24 Classes without their prior express consent.

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

27 41. As a result of Defendant's knowing and/or willful violations of the TCPA,

1 Plaintiff and the Classes are entitled to an award of treble damages up to \$1,500.00 for
2 each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C.
3 § 227(b)(3)(C).

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

6 43. Plaintiff and Class members are also entitled to and do seek a declaration
7 that:

- 8 • Defendant knowingly and/or willfully violated the TCPA;
- 9 • Defendant knowingly and/or willfully used prerecorded voices and/or
10 artificial voices on calls to Plaintiff and the Classes;
- 11 • Defendant willfully ignored Plaintiff and the Revoke Class's valid requests
12 to cease calling;
- 13 • Defendant willfully placed automated calls to the Plaintiff and the Classes at
14 the numbers received from those third parties, knowing it did not have prior
15 express consent to do so; and
- 16 • It is Defendant's practice and history to place automated telephone calls to
17 consumers without their prior express consent.

18
19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays that the Court grant Plaintiff and the Classes the
21 following relief against Defendant:

- 22 1. Injunctive relief prohibiting such violations of the TCPA by Defendant in
23 the future;
- 24 2. Declaratory relief as prayed for herein;
- 25 3. Statutory damages of \$500.00 for each and every call in violation of the
26 TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);

- 1 4. Treble damages of up to \$1,500.00 for each and every call in violation of
- 2 the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
- 3 5. An award of attorneys' fees and costs to counsel for Plaintiff and the Class;
- 4 and
- 5 6. Such other relief as the Court deems just and proper.

6 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

7
8 DATED: January 13, 2017

Plaintiff, Jay Rumpf

9
10 By: /s/ Trinette G Kent

11 Trinette G. Kent

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13 Phoenix, AZ 85028

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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): Jay Rumpf, et. al

Defendant(s): Prog Leasing, LLC d/b/a Progressive Leasing ; DOES 1-10, inclusive

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):

**Trinette G Kent
10645 North Tatum Blvd
Phoenix, Arizona 85028
(480) 247-9644**

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, et seq. Violations of the Telephone Consumer Protection Act

VII. Requested in Complaint

Class Action: **Yes**
Dollar Demand: **10000000**
Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s/ Trinette G. Kent

Date: 01/13/2017

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: [Prog Leasing, LLC Facing Robocall Class Action](#)
