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14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA

17 Kevin Krejci,

18 Plaintiff,

20 vs.

21 Cavalry Portfolio Services, LLC,

22 Defendant.

Case No.: **'16CV211 JLS WVG**

CLASS ACTION COMPLAINT

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1 Plaintiff, Kevin Krejci (hereafter “Plaintiff”), by undersigned counsel, brings
2 the following complaint against Cavalry Portfolio Services, LLC (hereafter
3 “Defendant” or “Cavalry”) and alleges, on his own behalf and on behalf of all those
4 similarly situated, as follows:
5

6 **JURISDICTION**
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8 1. Plaintiff seeks damages and injunctive relief for the illegal actions of
9 Defendant in contacting Plaintiff and Class members on their cellular telephones for
10 non-emergency purposes using an “automated telephone dialing system” (“ATDS”) in
11 direct contravention of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et
12 seq. (“TCPA”).
13

14 2. The TCPA regulates, among other things, the use of ATDS or
15 “autodialers.” 47 U.S.C. § 227(b)(1)(A)(iii). Specifically, the TCPA prohibits the use
16 of autodialers to make any call to a wireless number in the absence of an emergency
17 or the prior express consent of the called party. 47 C.F.R. §64.1200(a)(2).
18

19 3. According to findings by the Federal Communication Commission
20 (“FCC”), the agency Congress vested with authority to issue regulations implementing
21 the TCPA, such calls are prohibited because, as Congress found, automated calls are a
22 greater nuisance and invasion of privacy than live solicitation calls, and such calls can
23 be costly and inconvenient. The FCC also recognized that wireless customers are
24 charged for incoming calls whether they pay in advance or after the minutes are used.
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PARTIES, JURISDICTION AND VENUE

4. Plaintiff is, and at all times mentioned herein was, a resident and citizen of the State of California.

5. Cavalry is a Delaware business entity with its headquarters at 500 Summit Lake Drive, Valhalla, New York, 10595.

6. This Court has subject matter jurisdiction under 28 U.S.C. §1331.

7. Venue in the Southern District of California pursuant to 28 U.S.C. §§ 1391(b) because Defendant regularly conducts business in the County of San Diego and regularly places telephone calls to persons residing in the County of San Diego in its attempts to collect debts allegedly owed by these persons, and because the events giving rise to Plaintiff's cause of action occurred within the state of California.

ALLEGATIONS APPLICABLE TO ALL COUNTS

8. Cavalry is a debt collector in the business of collecting old debts. In furtherance of its efforts, Cavalry employs sophisticated telephonic dialing technology governed by the TCPA and the FCC's implementing regulations.

9. Cavalry called Plaintiff on his cellular telephone number 909-XXX-2202. When Plaintiff answered the calls, there was a period of silence, an electronic clicking or beeping, and then the call was routed to a Cavalry employee.

10. The foregoing is indicative of a predictive dialer and an ATDS under the TCPA.

1 11. Plaintiff does not know how Defendant acquired his cellular phone
2 number. Plaintiff did not provide it to Defendant nor did he provide Defendant
3 permission to call his number.
4

5 12. Plaintiff told Cavalry on several occasions to stop calling his 2202
6 number. Despite the requests, Cavalry continued to call the 2202 number.
7

8 13. The calls by Cavalry to Plaintiff were invasive, annoying, and violated
9 Plaintiff's privacy.
10

11 CLASS ACTION ALLEGATIONS

12 14. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23
13 on behalf of himself and all others similarly situated (the "Class") who were harmed
14 by the acts of Defendant.
15

16 15. Plaintiff represents and is a member of the Class, whose members are
17 defined as:
18

19 **All persons within the United States who received a telephone call**
20 **from Defendant, or its employees and/or agents, on their cellular**
21 **telephone that was placed using an automated telephone dialing**
22 **system within the four years prior to the filing of this Complaint.**

23 16. Excluded from the Class are all officers, directors, and employees of
24 Defendant, together with those individuals' immediate family members, and their
25 respective legal representatives, heirs, successors and assigns, the officers, directors
26 and employees of any parent, subsidiary or affiliate of Defendant, together with those
27 individuals' immediate family members, Counsel for Defendant and Class Counsel
28

1 and their immediate family members, in addition to those whose claims are barred by
2 the statute of limitations.

3
4 17. Plaintiff reserves the right to expand the Class if warranted as further
5 facts are discovered in investigation and discovery.

6
7 18. Defendant harmed Plaintiff and the members of the Class by illegally
8 contacting Plaintiff and the Class members on their cellular telephones, causing
9 charges to be incurred by Plaintiff and the Class, or by reducing cellular telephone
10 time for which Plaintiff and the Class members previously paid in having to retrieve
11 or administer messages left by Defendant during the aforementioned calls, and by
12 invading the privacy of said Plaintiffs and the Class members. Plaintiff and the Class
13 members were damaged thereby.
14

15
16 19. Upon information and belief, Defendant placed calls using an ATDS to
17 cellular telephone numbers belonging to tens of thousands of persons throughout the
18 United States, without their prior express consent and not for emergency purposes.
19 The members of the Class, therefore, are believed to be so numerous that joinder of all
20 members is impracticable, and the disposition of their claims in the Class action will
21 provide substantial benefits to the parties and the Court.
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24 20. The exact number and identities of the Class members are unknown at
25 this time and can only be ascertained through discovery. Identification of the Class
26 members can be had from Defendant's or its agents' records.
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1 21. The following questions of law and fact predominate over questions that
2 might affect individual Class members and are ripe for determination:
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- 4 • Whether Defendant made any call to Plaintiff and Class members
5 using an ATDS to any telephone number assigned to a cellular
6 telephone service within the four years prior to the filing of this
7 complaint, other than a call that was made with the prior express
8 consent of the recipient or made for emergency purposes;
9
- 10 • Whether the acts of Defendant damaged Plaintiff and the members
11 of the Class, and the extent of those damages;
12
- 13 • Whether Defendant should be enjoined from engaging in any such
14 conduct in the future.
15

16 22. Plaintiff asserts claims that are typical of the Class in that Defendant
17 placed at least one call to Plaintiff's cellular telephone within the last four years using
18 an ATDS without Plaintiff's prior express consent and not for emergency purposes.
19

20 23. The common questions in this case are capable of having common
21 answers. If Plaintiff's claim that Defendant routinely places calls using an ATDS to
22 telephone numbers assigned to cellular telephone services without prior express
23 consent from the person called and not for emergency purposes is accurate, Plaintiff
24 and the Class members will have identical claims capable of being efficiently
25 adjudicated and administered in this case.
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1 24. Plaintiff will fairly and adequately represent and protect the Class
2 interests, and has no antagonistic interests toward any Class members.
3

4 25. All Class claims arise from the very course of conduct and specific
5 activities complained of herein and require application of the same legal principles.
6

7 26. Irreparable harm has been suffered by Plaintiff and the Class members as
8 a result of Defendant's wrongful and illegal conduct.

9 27. Without this class action, Defendant will likely proceed without penalty
10 and continue its unlawful conduct, and the Class would continue to face the potential
11 of additional harm due to Defendant's conduct. Defendant cannot otherwise be
12 induced to comply with state and federal laws in the absence of Class wide damages,
13 and the class action is a superior vehicle for the fair and efficient adjudication of this
14 controversy.
15

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17 28. Most members of the Class would find the cost of litigating their claims
18 prohibitive in the absence of a class action, and therefore few Class members could
19 seek individual legal redress for the wrongs perpetrated by Defendant.
20

21 29. Plaintiff has retained a law firm experienced in litigating class actions
22 and consumer claims, who stands ready, willing, and able to represent the Class.
23

24 30. The members of the Class are generally unsophisticated individuals
25 whose rights will not be vindicated absent a class action. The interest of the Class
26 members in prosecuting individual claims against Defendant is small, because the
27 statutory damages in an individual claim for violation of privacy is minimal.
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1 Additionally, management of these claims as a class is superior to multiple individual
2 actions or piecemeal litigation in that it conserves the resources of both the Court and
3 the litigants, and promotes consistency and efficiency of adjudication.
4

5 31. Appropriate injunctive and declaratory relief with respect to the Class as
6 a whole can be had, insofar as Defendant wrongfully acted on grounds generally
7 applicable to the Class.
8

9 32. Prosecution of separate actions could result in inconsistent or varying
10 adjudications with respect to individual Class members that would establish
11 incompatible standards of conduct for Defendant. Conversely, adjudications with
12 respect to individual Class members would be dispositive of the interest of all other
13 Class members.
14

15 33. Additionally, Plaintiff and the Class are entitled to and seek injunctive
16 relief prohibiting such conduct by Defendant in the future.
17
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19 **COUNT I**
20 **VIOLATIONS OF THE TELEPHONE**
21 **CONSUMER PROTECTION ACT,**
22 **47 U.S.C. § 227, ET SEQ.**

23 34. Plaintiff incorporates by reference all of the above paragraphs of this
24 complaint as though fully stated herein.

25 35. The TCPA prohibits Defendant from using, other than for emergency
26 purposes, an ATDS and/or Robocalls when calling Plaintiff's Number absent
27 Plaintiff's prior express consent to do so. *See* 47 U.S.C. § 227(b)(1).
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- A. Statutory damages of \$500.00 for each call determined to be in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- B. Treble damages for each violation determined to be willful and/or knowing under the TCPA pursuant to 47 U.S.C. § 227(b)(3);
- C. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
- D. An award of attorneys' fees and costs to counsel for Plaintiff and the Class;
- E. Such other relief as the Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

DATED: January 27, 2016

TRINETTE G. KENT

By: /s/ Trinette G. Kent
Trinette G. Kent, Esq.
Lemberg Law, LLC
Attorney for Plaintiff, Kevin Krejci