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14 Nicole Hickman

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 Nicole Hickman, *on behalf of herself and*
19 *all others similarly situated,*

20 Plaintiff,

21 vs.

22 Farmers Insurance Company, Inc.,

23 Defendant.
24
25
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27
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Case No.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff, Nicole Hickman, by and through undersigned counsel, pleading on her
2 own behalf and on behalf of all others similarly situated, states as follows:

3 **INTRODUCTION**

4 1. Plaintiff, Nicole Hickman (“Plaintiff”), brings this class action for
5 damages resulting from the illegal actions of Farmers Insurance Company, Inc.
6 (“Farmers” or “Defendant”). Defendant knowingly and/or willfully placed automated
7 calls to Plaintiff’s cellular phone in violation of the Telephone Consumer Protection
8 Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”).

9 2. Farmers is a California-based corporation which “offer[s] homeowners
10 insurance, auto insurance, commercial insurance, and financial services throughout the
11 United States.” See <https://www.farmers.com/companies/> (last visited Mar. 29, 2017).

12 3. Plaintiff does not have Farmers insurance, has not inquired about
13 obtaining a Farmers insurance policy.

14 4. Nevertheless, for the last several years, Plaintiff has received automated
15 calls to her cellular telephone from Farmers regarding some other unknown
16 individual. Plaintiff did not provide Farmers her cell phone number or prior express
17 consent to be contacted there. Moreover, Plaintiff requested that Farmers cease
18 calling her on multiple occasions. Farmers ignored Plaintiff’s requests and continued
19 calling her. She brings this lawsuit on behalf of herself and like-situated consumers
20 for Farmers’ straightforward violations of the TCPA.

21 **PARTIES, JURISDICTION, AND VENUE**

22 5. Plaintiff is and at all times mentioned herein was an individual person
23 residing in Carrollton, Texas.

24 6. Farmers is a California corporation with an address of 6301 Owensmouth
25 Avenue, Woodland Hills, CA 91367.

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

27 8. Personal jurisdiction and venue in this district are proper pursuant to 28
28

1 U.S.C. § 1391(b) because Farmers resides here and a substantial part of the events
2 giving rise to the claim occurred here.

3 **FACTS RELATED TO PLAINTIFF**

4 9. Farmers placed automated telephone calls to Plaintiff on her cellular
5 telephone at telephone number 214-XXX-1423 regarding another individual who
6 Plaintiff does not know.

7 10. Farmers called Plaintiff from telephone number 972-210-2533.

8 11. At all times mentioned herein, Farmers called Plaintiff's cellular
9 telephone using an "automatic telephone dialing system" ("autodialer") as defined by
10 47 U.S.C. § 227(a)(1).

11 12. When Plaintiff answered the calls from Farmers, she heard an extended
12 period of silence before the calls would be routed to a live agent. This is indicative of
13 Farmers's use of a "predictive dialer," an autodialer under the TCPA.

14 13. Plaintiff does not own a Farmers insurance policy. Plaintiff has never
15 sought or obtained insurance with Farmers. Nor has Plaintiff ever inquired about
16 obtaining insurance with Farmers. Plaintiff did not give her telephone number to
17 Farmers or permit anyone else to do so. Plaintiff did not provide prior express
18 consent to Farmers to autodial her cellular telephone. Accordingly, the automated
19 calls placed by Farmers to Plaintiff were in violation of 47 U.S.C. § 227(b)(1)(A).
20

21 14. On at least one occasion, Plaintiff answered Farmers's call, waited
22 through a dead-air pause, spoke to a Farmers representative who asked for a person is
23 unknown to Plaintiff, informed Farmers that it was calling the wrong number, and
24 requested that Farmers cease calling.

25 15. Nevertheless, Farmers's automated calls continued.

26 16. Plaintiff was annoyed, frustrated, distracted, distressed and
27 inconvenienced by Farmers's calls.

28 17. Farmers's calls invaded Plaintiff's privacy by interrupting Plaintiff's

activities while she was in her home, including waking Plaintiff from sleep on at least one occasion.

18. Plaintiff's inability to get the calls to stop, even through explicit request to Farmers, caused Plaintiff further frustration and emotional drain.

19. Plaintiff's time was wasted answering Farmers's calls Plaintiff neither asked for nor wanted.

20. Moreover, the calls caused Plaintiff tangible harm. Defendant's calls caused Plaintiff's cell phone battery to deplete, resulting in Plaintiff recharging the battery more often and incurring additional electricity charges.

21. The telephone number called by Farmers was and is assigned to a cellular telephone service pursuant to 47 U.S.C. § 227(b)(1).

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

CLASS ALLEGATIONS

A. The Class

23. Plaintiff brings this claim pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3) on behalf the following classes (the "Classes"):

TCPA Class: (1) All persons in the United States (2) to whose cellular telephone number (3) Farmers placed a non-emergency telephone call (4) using an autodialer or a prerecorded voice (5) within four years of the complaint.

Revoke Class: (1) All persons in the United States (2) to whose cellular telephone number (3) Farmers placed a non-emergency telephone call (4) using an autodialer or a prerecorded voice (5) within four years of the complaint (6) after said person requested Farmers cease calling.

24. Plaintiff represents and is a member of the Classes. Excluded from the Classes are Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, the Judge to whom this action is assigned and

1 any member of the Judge's staff and immediate family.

2 **B. Numerosity**

3 25. Plaintiff does not know the exact number of members in the Classes,
4 but based upon the size and national scope of Farmers and the automated nature of
5 the calls, Plaintiff reasonably believes that the Classes number in the thousands.

6 26. The joinder of all Class members is impracticable due to the size and
7 relatively modest value of each individual claim. The disposition of the claims in a
8 class action will provide substantial benefit to the parties and the Court in avoiding a
9 multiplicity of identical suits. The Classes can be identified easily through records
10 maintained by Defendant.

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

12 27. There are questions of law and fact common to the Classes that
13 predominate over any questions affecting only individual Class members. These
14 questions include:

- 15
- 16 i. Whether Farmers engaged in a pattern of using an autodialer to
 - 17 place calls to cellular phones;
 - 18 ii. Whether Farmers had prior express consent to place the calls; and
 - 19 iii. Whether Farmers willfully violated the TCPA.

20 28. The common questions in this case are capable of having common
21 answers. If Plaintiff's claim that Farmers routinely places automated calls to
22 telephone numbers assigned to cellular telephone services without prior express
23 written consent is accurate, Plaintiff and the Class members will have identical
24 claims capable of being efficiently adjudicated and administered in this case.

25 **D. Typicality**

26 29. As a person who received automated telephone calls from Farmers on
27 her cellular phone without having given prior express consent, and who advised
28 Farmers to cease calling, Plaintiff asserts claims that are typical of the members of

1 the Classes.

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

3 30. Plaintiff will fairly and adequately protect the interests of the Classes
4 and has retained counsel experienced in handling class actions and claims involving
5 unlawful business practices. Neither Plaintiff nor her counsel has any interests
6 which might cause them not to vigorously pursue this action.

7 **F. Proceeding via Class Action is Superior and Advisable**

8 31. A class action is the superior method for the fair and efficient
9 adjudication of this controversy. The interest of Class members in individually
10 controlling the prosecutions of separate claims against Farmers is small because it is
11 not economically feasible for Class members to bring individual actions.

12 32. Management of this class action is unlikely to present any difficulties.
13 Courts have routinely certified classes in TCPA actions. These cases include, but
14 are not limited to: *Bee, Denning, Inc. v. Capital All. Grp.*, 310 F.R.D. 614, 630 (S.D.
15 Cal. 2015) (granting TCPA class certification and finding that “[w]ithout the
16 prospect of a class action suit, corporations balancing the costs and benefits of
17 violating the TCPA are unlikely to be deterred because individual claims will not
18 impose the level of liability that would outweigh the potential benefits of violating
19 the statute”); *Krakauer v. Dish Network L.L.C.*, 311 F.R.D. 384, 400 (M.D.N.C.
20 2015); *Birchmeier v. Caribbean Cruise Line, Inc.*, 302 F.R.D. 240, 256 (N.D. Ill.
21 2014); *Lo v. Oxnard European Motors, LLC*, 2012 WL 1932283 (S.D. Cal., May 29,
22 2012).

23 33. Defendant has acted on grounds generally applicable to the Classes,
24 thereby making final injunctive relief and corresponding declaratory relief with
25 respect to the Class appropriate. Moreover, Plaintiff alleges that the TCPA violations
26 complained of herein are substantially likely to continue in the future if an injunction
27 is not entered.
28

COUNT I – VIOLATIONS OF THE TCPA

34. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

35. Plaintiff brings this claim on behalf of herself and the Classes.

36. Farmers made automated telephone calls to the wireless telephone number of Plaintiff and the other Class members. These phone calls were made without the prior express consent of Plaintiff or the other Class members and were not made for emergency purposes.

37. Farmers has therefore violated the TCPA, 47 U.S.C. § 227(b)(1)(A), which makes it “unlawful for any person within the United States . . . 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 artificial or prerecorded voice.”

38. Each of the aforementioned calls by Farmers constitutes a violation of the TCPA.

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

40. Plaintiff and Class members are also entitled to and do seek injunctive relief prohibiting Defendant’s violation of the TCPA in the future.

41. Plaintiff and Class members are also entitled to and do seek a declaration that:

- Defendant violated the TCPA;
- Defendant used an autodialer; and
- Defendant placed calls to the Plaintiff and the Class without prior express consent.

COUNT II – WILLFUL VIOLATIONS OF THE TCPA

1 42. Plaintiff incorporates the foregoing allegations as if fully set forth
2 herein.

3 43. Plaintiff brings this claim on behalf of herself and the Classes.

4 44. Farmers made automated telephone calls to the wireless telephone
5 number of Plaintiff and the other Class members. These phone calls were made
6 without the prior express consent of Plaintiff or the other Class members and were
7 not made for emergency purposes.

8 45. Farmers has therefore violated the TCPA, 47 U.S.C. § 227(b)(1)(A),
9 which makes it “unlawful for any person within the United States . . . to make any
10 call (other than a call made for emergency purposes or made with the prior express
11 consent of the called party) using any automatic telephone dialing system or an
12 artificial or prerecorded voice.”

13 46. Each of the aforementioned calls by Farmers constitutes a willful
14 violation of the TCPA.

15 47. Plaintiff and Class members are entitled to an award of up to \$1,500.00
16 in statutory damages for each call made in willful violation of the TCPA pursuant to
17 47 U.S.C. § 227(b)(3).

18 48. Plaintiff and Class members are also entitled to and do seek injunctive
19 relief prohibiting Defendant’s violation of the TCPA in the future.

20 49. Plaintiff and TCPA Class members are also entitled to and do seek a
21 declaration that:

- 22
- 23 • Defendant knowingly and/or willfully violated the TCPA;
 - 24 • Defendant knowingly and/or willfully used an autodialer on calls to
25 Plaintiff and the Classes;
 - 26 • Defendant knowingly and/or willfully obtained the telephone numbers
27 of non-customers;
 - 28 • Defendant willfully placed automated calls to non-customers such as

1 Plaintiff and the Classes, knowing it did not have prior express consent
2 to do so;

- 3 • It is Defendant's practice and history to place automated telephone calls
4 to non-consumers without their prior express consent; and
5 • It is Defendant's practice and history to ignore consumers' requests that
6 Farmers cease autodialing their cellular telephone numbers.
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff requests that the Court enter judgment in favor of
10 Plaintiff and the Classes and against Defendant for:

- 11 A. Statutory damages pursuant to 47 U.S.C. § 227(b)(3);
12 B. Injunctive relief prohibiting such violations of the TCPA by
13 Defendant in the future;
14 C. Declaratory relief as prayed for herein; and
15 E. Such other relief as the Court deems just and proper.

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

17 DATED: April 20, 2017

TRINETTE G. KENT

19 By: /s/ Trinette G. Kent

20 Trinette G. Kent, Esq.

21 Lemberg Law, LLC

22 Attorney for Plaintiff, Nicole Hickman
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