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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JEFFREY KEARNS, individually
and on behalf of all others
similarly situated,

Plaintiff,

v.

LOANDEPOT.COM, LLC.,

Defendant.

Case No. 8:22-cv-01217-JWH-JDE

CLASS ACTION

**SECOND AMENDED CLASS
ACTION COMPLAINT¹**

JURY TRIAL DEMANDED

1. Plaintiff Jeffrey Kearns bring this action on behalf of himself and others similarly situated against Defendant loanDepot.com, LLC to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

NATURE OF THE ACTION

2. Defendant is a lender that provides consumer financial services nationwide.

3. To market its services, Defendant sends robocalls to consumers without their express written consent in violation of the TCPA.

¹ Filed with Defendant’s written consent pursuant to Federal Rule of Civil Procedure 15(a)(2).

1 4. Defendant has previously been sued for violations of the TCPA but it
2 continues to violate the law because telemarketing is the primary way it generates
3 consumer leads.

4 5. Countless consumers on the Internet have expressed frustration with
5 Defendant's robocalls. The following is just a small sample:

6 2 **LOAN DEPOT (Company) reported by *TOOPOKEY***
7 JUST A MORTGAGE LENDER TRYING TO GET
8 BUSINESS. HOPEFULLY THEY WILL NOT
9 CONTINUE TO CALL

10 2 Loan Depot. Selling mortgage refinances

11 2 you ask abt refinance then your phone blows up w
12 unwanted sales pitches

13 2 This level of harassment isn't right.

14 2 Geez, told them no Thanks, 60 calls later, still calling

15 2 loan company, telling big lies!

16 2 These people got my number from filling out a survey. Did
17 some basic numbers, and found a better deal with a
18 friend's company. I let them know that the answer was
19 "NO". They have been texting and emailing AND calling
20 every day, sometimes several times a day, ever since.²

21 2 i started a rate quote online but they kept asking for more
22 info. each step saying you are almost done. i stopped
23 filling out form but didnt stop them from relentlessly
24 calling leaving a few robocalls from "Savannah", and

25 _____
26 ² www.shouldianswer.com/phone-number/8775336619; (last accessed Aug. 26,
27 2022).

more then 10 more with no message.
they must be desperate for business. no thanks.

Caller: loan depot

Call type: Telemarketer

2 received some calls before one from this number from Chicago but still Loan Depot. then received a call them this number and googled it and now I see it is related. so same thing. calling constantly³

6. Through this action, Plaintiff seeks injunctive relief to stop Defendant's unlawful conduct, which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of himself and members of the Class, and any other available legal or equitable remedies.

JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* ("TCPA").

8. This Court has supplemental jurisdiction over Plaintiff's Garcia-Cortez CIPA claims pursuant to 28 U.S.C. § 1367.

9. The Court has general personal jurisdiction over Defendant because Defendant is incorporated and headquartered in California, and venue is proper in this District because Defendant directs, markets, and provides its business activities to this District, and because Defendant's unauthorized marketing scheme was directed by Defendant to consumers in this District, including Plaintiff.

PARTIES

10. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Greene County, Missouri.

³ www.800notes.com/Phone.aspx/1-602-899-3177; (last accessed Aug. 26, 2022).

1 played the following prerecorded voice message: “Hi, this is Savannah from
2 LoanDepot with some great news regarding your recent mortgage refinancing
3 application. If you're no longer interested in mortgage information, please press # to
4 opt out or call us at 866-965-9011. We are missing just a few pieces of critical
5 information necessary in getting you fully approved and it will only take a few
6 minutes of your time. I will be here until 8:00pm Pacific time to assist you. So please
7 call me back at 866-965-9011. Again that number is 866-965-9011. I know we can
8 provide you with the lowest rates available and I look forward to hearing from you
9 soon. Have a great day.”. The message used by Defendant was recorded prior to it
10 being utilized during the call to Plaintiff, and a live person did not read a script during
11 the call.

12 20.

13 21. The purpose of Defendant’s prerecorded voice call was to encourage
14 Plaintiff to refinance his mortgage loan with Defendant and for Plaintiff to use
15 Defendant’s loan services for which Defendant would have charged Plaintiff various
16 fees.

17 22. Defendant is not Plaintiff’s mortgage lender or servicer, and Plaintiff
18 has never had any relationship with Defendant.

19 23. Plaintiff has never submitted a loan application to Defendant or
20 attempted to refinance his mortgage loan with Defendant.

21 24. Plaintiff is the subscriber and sole user of the number that received
22 Defendant’s robocall.

23 25. When Plaintiff listened to the prerecorded voice message, he was easily
24 able to determine that it was a prerecorded message. *Rahn v. Bank of Am.*, No. 1:15-
25 CV-4485-ODE-JSA, 2016 U.S. Dist. LEXIS 186171, at *10-11 (N.D. Ga. June 23,
26 2016) (“When one receives a call, it is a clear-cut fact, easily discernible to any lay
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1 person, whether or not the recipient is speaking to a live human being, or is instead
2 being subjected to a prerecorded message.”).

3 26. Defendant’s prerecorded message call constitutes
4 telemarketing/advertising because it promoted Defendant’s business, loan products
5 and related services.

6 27. Plaintiff did not provide Defendant with his express written consent to
7 be contacted utilizing a prerecorded voice message.

8 28. Specifically, Plaintiff never completed any type of form that clearly and
9 conspicuously authorized Defendant to contact Plaintiff’s cellular telephone with
10 prerecorded marketing calls.

11 29. Given Defendant’s use of prerecorded voice messages to solicit
12 consumers, as well as the consumer complaints referenced above, Plaintiff is
13 informed and believe that Defendant caused similar prerecorded messages to be sent
14 to at least 50 other individuals.

15 30. Defendant’s unsolicited prerecorded calls caused Plaintiff harm,
16 including invasion of privacy, aggravation, and annoyance. Defendant’s calls also
17 inconvenienced Plaintiff and caused disruption to his daily life.

18 **CLASS ALLEGATIONS**

19 **PROPOSED CLASS**

20 31. Plaintiff bring this case as a class action pursuant to Fed. R. Civ. P. 23,
21 on behalf of themselves and all others similarly situated.

22 32. Plaintiff brings this case on behalf of the Class defined as follows:

23 All persons in the United States who, within four years
24 prior to the filing of this action through the date of class
25 certification, were sent a prerecorded voice call on their
26 cellular telephone for the purpose of encouraging the
27 purchase or rental of, or investment in, Defendant’s
28 property, goods and/or services, and whose cellular
telephone number Defendant obtained solely from
LendingTree.

33. Plaintiff reserves the right to modify the Class definitions as warranted as facts are learned in further investigation and discovery.

34. Defendant and its employees or agents are excluded from the Class.

NUMEROSITY

35. Upon information and belief, Defendant has placed prerecorded calls to telephone numbers belonging to at least 50 persons throughout the United States without their prior express written consent. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

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

COMMON QUESTIONS OF LAW AND FACT

37. There are numerous questions of law and fact common to members of the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the members of the Class are:

- a. Whether Defendant made non-emergency calls to Plaintiff's and Class members' telephones using a prerecorded message;
- b. Whether Defendant can meet its burden of showing that it obtained prior express written consent to make such calls;
- c. Whether Defendant's conduct was knowing and willful;
- d. Whether Defendant is liable for damages, and the amount of such damages; and
- e. Whether Defendant should be enjoined from such conduct in the future.

1 38. The common questions in this case are capable of having common
2 answers and Plaintiff and the Class members will have identical claims capable of
3 being efficiently adjudicated and administered in this case.

4 **TYPICALITY**

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

7 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

8 40. Plaintiff is a representative who will fully and adequately assert and
9 protect the interests of the Class, and have retained competent counsel. Accordingly,
10 Plaintiff is an adequate representatives and will fairly and adequately protect the
11 interests of the Class.

12 **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

13 41. A class action is superior to all other available methods for the fair and
14 efficient adjudication of this lawsuit, because individual litigation of the claims of
15 all members of the Class is economically unfeasible and procedurally impracticable.
16 While the aggregate damages sustained by the Class are in the millions of dollars,
17 the individual damages incurred by each member of the Class resulting from
18 Defendant's wrongful conduct are too small to warrant the expense of individual
19 lawsuits. The likelihood of individual Class members prosecuting their own separate
20 claims is remote, and, even if every member of the Class could afford individual
21 litigation, the court system would be unduly burdened by individual litigation of
22 such cases.

23 42. The prosecution of separate actions by members of the Class would
24 create a risk of establishing inconsistent rulings and/or incompatible standards of
25 conduct for Defendant. For example, one court might enjoin Defendant from
26 performing the challenged acts, whereas another may not. Additionally, individual
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1 actions may be dispositive of the interests of the Class, although certain class
2 members are not parties to such actions.

3 **COUNT I**
4 **Violations of the TCPA**
5 **(On Behalf of Plaintiff and the TCPA Class)**

6 43. Plaintiff re-alleges and incorporates the foregoing allegations set forth
7 in paragraphs 1 through 42 as if fully set forth herein.

8 44. It is a violation of the TCPA to make “any call (other than a call made
9 for emergency purposes or made with the prior express consent of the called party)
10 using any ...artificial or prerecorded voice to any telephone number assigned to a ...
11 cellular telephone service” 47 U.S.C. § 227(b)(1)(A)(iii).

12 45. It is a violation of the TCPA regulations promulgated by the FCC to
13 “initiate any telephone call...using an... artificial or prerecorded voice to any
14 telephone number assigned to a paging service, cellular telephone service,
15 specialized mobile radio service, or other radio common carrier service, or any
16 service for which the called party is charged for the call.” 47 C.F.R. §
17 64.1200(a)(1)(iii).

18 46. Additionally, it is a violation of the TCPA regulations promulgated by
19 the FCC to “[i]nitiate, or cause to be initiated, any telephone call that includes or
20 introduces an advertisement or constitutes telemarketing, ...artificial or prerecorded
21 voice ...other than a call made with the prior express written consent of the called
22 party or the prior express consent of the called party when the call is made...” 47
23 C.F.R. § 64.1200(a)(2).

24 47. Defendant used prerecorded messages to make non-emergency
25 telephone calls to the cellular telephones of Plaintiff and other members of the Class.
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- 1 d) As a result of Defendant's knowing and/or willful violations of 47
2 U.S.C. §§ 227, *et seq.*, Plaintiff seeks for themselves and each member
3 of the Class treble damages, as provided by statute, up to \$1,500.00 for
4 each and every violation pursuant to 47 U.S.C. § 277(b)(3)(B) and §
5 277(b)(3)(C);
- 6 e) An order declaring that Defendant's actions, as set out above, violate
7 the TCPA;
- 8 f) An injunction requiring Defendant to cease all unsolicited call activity,
9 and to otherwise protect the interests of the Class;
- 10 g) An injunction prohibiting Defendant from using, or contracting the use
11 of, prerecorded messages without obtaining, recipient's consent to
12 receive calls made with such equipment;
- 13 h) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
14 California Code of Civil Procedure § 1021.5; and
- 15 i) Such further and other relief as the Court deems necessary.

16 **JURY DEMAND**

17 Plaintiff hereby demand a trial by jury.
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1 Dated: October 9, 2023

2 Respectfully submitted,

3 **HIRALDO P.A.**

4 /s/ Manuel S. Hiraldo

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