

1 **MARCUS ZELMAN, LLC**
Yitzchak Zelman, Esq. (*pro hac vice to be filed*)
2 701 Cookman Avenue, Suite 300
3 Asbury Park, NJ 07712
Office: (732) 695-3282
4 Fax: (732) 298-6256
5 Email: yzelman@MarcusZelman.com

6 **KAZEROUNI LAW GROUP, APC**
7 Abbas Kazerounian, Esq. (SBN: 249203)
ak@kazlg.com
8 245 Fischer Avenue, Unit D1
9 Costa Mesa, CA 92626
Telephone: (800) 400-6808
10 Facsimile: (800) 520-5523

11 [Additional Counsel On Signature Page]

12
13 *Attorneys for Plaintiff*

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

16 **ETA TIKOTZKY, Individually and**
17 **On Behalf of All Others Similarly**
18 **Situated,**

19 Plaintiff,

20 v.

21 **KAI DATA, LLC,**

22 Defendant.
23
24

Case No.: 2:21-cv-00971

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff ETA TIKOTZKY (hereinafter, “Plaintiff”), individually and on
2 behalf of all others similarly situated, bring this Class Action Complaint (the
3 “Complaint”) against Defendant KAI DATA, LLC (hereinafter “Kai Data” or
4 “Defendant”), and allege, upon personal knowledge as to Plaintiff’s own conduct,
5 and upon information and belief as to the conduct of others, as follows:

6 **INTRODUCTION**

7 1. Plaintiff brings this class action Complaint against Defendant to
8 secure redress because Defendant negligently or willfully violated the Telephone
9 Consumer Protection Act, 47 U.S.C § 227, *et seq.* (“TCPA”) and invaded Plaintiff’s
10 privacy by causing unsolicited phone calls and pre-recorded voice messages to be
11 made to Plaintiff’s and other class members’ cellular telephones through the use of
12 an auto-dialer.

13 2. Defendant made one or more unauthorized phone calls with pre-
14 recorded voice messages to Plaintiff’s cellular telephone using an automatic
15 telephone dialing system (“ATDS”) for the purpose of soliciting business from
16 Plaintiff.

17 3. The TCPA was enacted to protect consumers from unsolicited and
18 unwanted telephone calls and pre-recorded voice messages exactly like those
19 alleged in this case.

20 4. In response to Defendant’s unlawful conduct, Plaintiff seeks an
21 injunction requiring Defendant to cease all unsolicited calling and pre-recorded
22 voice messaging activities, and an award of statutory damages to the members of
23 the Classes (defined below).

24 **PARTIES**

25 5. Plaintiff Eta Tikotzky is currently a citizen of New Jersey and
26 currently resides in Ocean County, New Jersey.

27 6. Defendant Kai Data, LLC is and was at all relevant times a business
28 entity duly formed under the laws of the State of Ohio with an office at 3814 West

1 Street, Ste. 104, Cincinnati, OH 45227.

2 7. Whenever in this Complaint it is alleged that Defendant committed
3 any act or omission, it is meant that the Defendant’s officers, directors, vice-
4 principals, agents, servants, or employees committed such act or omission and that
5 at the time such act or omission was committed, it was done with the full
6 authorization, ratification or approval of Defendants or was done in the routine
7 normal course and scope of employment of the Defendants’ officers, directors,
8 vice-principals, agents, servants, or employees.

9 **JURISDICTION AND VENUE**

10 8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as
11 this action arises under the TCPA, a federal statute.

12 9. The Court has personal jurisdiction over Defendant because it
13 conducts significant business in this District, and the unlawful conduct alleged in
14 this Complaint was directed to this judicial District. Specifically, Defendant called
15 Plaintiff on cellular telephone number with a California area code 323 (Los
16 Angeles, California is an area served by the 323 area code) concerning real property
17 located in California.

18 10. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)
19 because the wrongful conduct giving rise to this case was directed to this District.

20 11. Defendant is subject to specific personal jurisdiction in this District
21 because it has continuous and systematic contacts with this District through its
22 telemarketing efforts that target this District, and the exercise of personal
23 jurisdiction over Defendant in this District does not offend traditional notions of
24 fair play or substantial justice.

25 **LEGAL BASIS FOR THE CLAIMS**

26 12. In 1991, Congress enacted the TCPA to regulate the explosive growth
27 of the telemarketing industry. In doing so, Congress recognized that “[u]nrestricted
28 telemarketing ... can be an intrusive invasion of privacy....” Telephone Consumer

1 Protection Act of 1991, Pub. L. No. 102-243 § 2(5) (1991) (codified at 47 U.S.C.
2 § 227).

3 13. Specifically, the TCPA restricts telephone solicitations (i.e.,
4 telemarketing) and the use of automated telephone equipment. The TCPA limits
5 the use of automatic dialing systems, artificial or prerecorded voice messages, SMS
6 text messages, and fax machines. It also specifies several technical requirements
7 for fax machines, auto dialers, and voice messaging systems – principally with
8 provisions requiring identification and contact information of the entity using the
9 device to be contained in the message.

10 14. In its initial implementation of the TCPA rules, the FCC included an
11 exemption to its consent requirement for prerecorded telemarketing calls. Where
12 the caller could demonstrate an “established business relationship” with a
13 customer, the TCPA permitted the caller to place pre-recorded telemarketing calls
14 to residential lines. The new amendments to the TCPA, effective October 16, 2013,
15 eliminated this established business relationship exemption. Therefore, all pre-
16 recorded telemarketing calls to residential lines and all ATDS calls to wireless
17 numbers violate the TCPA if the calling party does not first obtain express written
18 consent from the called party.

19 15. As of October 16, 2013, unless the recipient has given prior express
20 written consent,¹ the TCPA and Federal Communications Commission (“FCC”)
21 rules under the TCPA generally:

- 22 • Prohibit solicitors from calling residences before 8 a.m. or after 9 p.m.,
23 local time.
- 24 • Require that solicitors provide their name, the name of the person or

25 ¹ Prior express written consent means “an agreement, in writing, bearing the
26 signature of the person called that clearly authorizes the seller to deliver or cause
27 to be delivered to the person called advertisements or telemarketing messages using
28 an automatic telephone dialing system or an artificial or prerecorded voice, and the
telephone number to which the signatory authorizes such advertisements or
telemarketing messages to be delivered.” 47 C.F.R. § 64.1200(f)(8).

1 entity on whose behalf the call is being made, and a telephone number
2 or address at which that person or entity may be contacted.

- 3 • Prohibit solicitations to residences that use an artificial voice or a
4 recording.
- 5 • Prohibit any call or text made using automated telephone equipment
6 or an artificial or prerecorded voice to a wireless device or cellular
7 telephone.
- 8 • Prohibit any call made using automated telephone equipment or an
9 artificial or prerecorded voice to an emergency line (e.g., "911"), a
10 hospital emergency number, a physician's office, a hospital/health
11 care facility/elderly room, a cellular telephone, or any service for
12 which the recipient is charged for the call.

13 16. Furthermore, in 2008, the FCC held that “a creditor on whose behalf
14 an autodialed or prerecorded message call is made to a wireless number bears the
15 responsibility for any violation of the Commission’s rules.” In re Rules and
16 Regulations Implementing the Telephone Consumer Protection Act, Declaratory
17 Ruling on Motion by ACA International for Reconsideration, 23 FCC Rcd. 559,
18 565, ¶ 10 (Jan. 4, 2008); Birchmeier v. Caribbean Cruise Line, Inc., 2012 WL
19 7062748 (N.D. Ill., Dec. 31, 2012).

20 17. Accordingly, the entity can be liable under the TCPA for a call made
21 on its behalf, even if the entity did not directly place the call. Under those
22 circumstances, the entity is deemed to have initiated the call through the person or
23 entity.

24 **FACTUAL ALLEGATIONS**

25 18. Upon information and belief, Kai Data operates a data mining system,
26 along with a powerful autodialing system, which it packages together and markets
27 to real estate businesses throughout the country.

28 19. Essentially, Kai Data scrapes the Internet for names and phone

1 numbers of people who have listed their homes for sale, including (1) For Sale By
2 Owner, (2) For Rent By Owner, (3) Expired Listings. *See*, Exhibit A.

3 20. Kai Data then loads all these names and numbers into their database,
4 and markets this database to real estate agents and brokers who are searching for
5 leads to contact.

6 21. Going one step further, Kai Data also gathers community-wide
7 information with a feature called “Neighborhood Search”, to enable real estate
8 agents and brokers to contact the neighbors of these listings, to create ‘buzz’
9 regarding an open house in the neighborhood, or to ‘farm’ the buyers and sellers in
10 any given area. *See*, Exhibit A.

11 22. On that same platform, Kai Data also provides these real estate agents
12 and brokers with a powerful dialing system - called the Vulcan 7 Dialer – to call
13 the phone numbers gathered by Kai Data.

14 23. Subscribers of Kai Data pay a monthly subscription fee to be given
15 access to Kai Data’s platform, from where they use Kai Data’s dialer to call the
16 phone numbers scraped by Kai Data from the Internet and stored in Kai Data’s
17 database.

18 24. Using “Neighborhood Search” a Kai Data subscriber can highlight an
19 entire block or other geographical area, and the Kai Data system will gather the
20 phone numbers of the individuals residing within the selected area, presenting those
21 phone numbers to the subscriber to be called using Kai Data’s Vulcan 7 Dialer.

22 25. Kai Data also enables its subscribers to record and save pre-recorded
23 voice messages to be left on the answering machines of those individuals who did
24 not answer the calls placed to them.

25 26. When subscribers of Kai Data wish to call the telephone numbers
26 stored in the Kai Data database, they press a button and answer a call from Kai
27 Data.

28 27. The Vulcan7 system then commences automatically calling the phone

1 numbers stored in the Kai Data database, in an effort to connect the real estate agent
2 with potential leads of individuals who are interested in the services of such an
3 agent.

4 28. When the call is not answered, the Vulcan 7 Dialer will play the pre-
5 recorded voice message stored in the Kai Data system, before moving on to call the
6 next phone number stored in that system.

7 29. Subscribers using Kai Data's Vulcan7 Dialer cannot and do not use
8 the dialer to call phone numbers other than the phone numbers gathered by Kai
9 Data and stored in the Kai Data database.

10 30. Kai Data controls how often the Vulcan7 Dialer may be used to
11 contact telephone numbers stored in its database.

12 31. Kai Data makes zero effort to obtain the express, written consent of
13 the individuals being called, before adding that individual's phone number to its
14 database to be called by the legions of Kai Data subscribers seeking to make a new
15 sale or contact a new lead.

16 32. Kai Data makes zero effort to obtain any consent whatsoever from
17 these individuals, before adding their phone numbers to the Kai Data database and
18 presenting those numbers to be called by Kai Data subscribers.

19 33. Upon information and belief, Defendant does not have an Internal Do
20 Not Call database for individuals who tell Kai Data subscribers to stop calling them.

21 34. In Kai Data's overzealous attempt to market its services as an all-in-
22 one lead generator and dialing system, Defendant knowingly placed (and continues
23 to make) automated telemarketing phone calls and pre-recorded messages without
24 the prior express written consent of the call recipients. As such, Kai Data not only
25 invaded the personal privacy of Plaintiff and the members of the Classes, but also
26 intentionally and repeatedly violated the TCPA.

27
28 **FACTUAL BACKGROUND AS TO PLAINTIFF**

1 35. Sometime prior to 2010, Plaintiff was assigned, and became the owner
2 of a cellular telephone number of 323-333-XXXX.

3 36. In or around June of 2019, Defendant added the Plaintiff to its
4 database, having scraped the Plaintiff's contact information from the Internet.

5 37. As a result, Plaintiff started being bombarded with incessant calls, text
6 messages and pre-recorded voice messages from Kai Data subscribers, using Kai
7 Data's Vulcan7 dialing system to call the phone numbers gathered by Kai Data.

8 38. Plaintiff received calls where real estate agents working in at least
9 three different real estate companies, including Remax Real Pros, Mainstreet
10 Realtors and Century 21 desired to contact Plaintiff.

11 39. One of the pre-recorded messages, left on a voicemail, beginning after
12 a two second pause, stated:

13 "Hi I was calling about your home that was for sale. I am wondering
14 if its still available or if its been sold. If you could call me back I would
15 appreciate it. My name is Jason Lopez and my number is area code
16 626-926-2702. Thank You."

17 40. Another one of the pre-recorded messages, left on a voicemail,
18 beginning after a three second pause, stated:

19 "Hi I noticed that your home recently came off the market and I have
20 some interest in your home. I have some unique marketing ideas that
21 nobody else is using right now that I would like to share with you, so
22 please call me 909-800-7264 that is 909-800-7264 at your earliest
23 convenience."

24 41. A third one of the pre-recorded messages, left on a voicemail,
25 beginning after a three second pause, stated:

26 "Hi my name is Valerie from C21 Plaza. I am sure you figured out
27 that your home came up on our computer as an expired listing. And I
28 was calling to see if you are familiar with the techniques that I use to

1 sell homes in the quickest time possible. I would love to sit down with
2 you. Please when you get a chance call me back, my number is 818-
3 425-9618 again that is 818-425-9618. Thanks have a great day.”

4 42. On information and belief, and based on the circumstances as
5 described above, Defendant placed one or more pre-recorded voice messages to the
6 Plaintiff and called the Plaintiff using an Automatic Telephone Dialing System.

7 **LEGAL CLAIMS**

8 43. Defendant’s calls constituted calls that were not for emergency
9 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

10 44. Plaintiff did not provide Defendant prior express written consent to
11 place calls to her cellular telephone utilizing an ATDS or artificial or pre-recorded
12 voice, pursuant to 47 U.S.C. § 227 (b)(1)(A).

13 45. Upon information and belief, the automated dialing system used by
14 Defendant has the capacity to store or produce telephone numbers to be called,
15 using a random or sequential number generator.

16 46. Upon information and belief, the automated dialing system also has
17 the capacity to, and does, dial telephone numbers stored as a list or in a database
18 without human intervention.

19 47. Defendant’s telephonic communications were made to a telephone
20 number assigned to a cellular telephone service for which Plaintiff pays for wireless
21 telephone services, pursuant to 47 U.S.C. § 227(b)(1).

22 48. Plaintiff was personally affected by Defendant’s aforementioned
23 conduct because Plaintiff was frustrated and distressed that Defendant frequently
24 annoyed Plaintiff with several unwanted marketing calls to Plaintiff’s personal cell
25 phone.

26 49. Defendant’s telephonic communications forced Plaintiff and other
27 similarly situated class members to live without the utility of their cellular phones
28

1 because they were occupied with automated and prerecorded calls, causing
2 annoyance and lost time.

3 50. The calls and pre-recorded voice messages Defendant placed to
4 Plaintiff invaded Plaintiff's privacy and violated 47 U.S.C. § 227(b)(1).

5 51. Plaintiff has reason to believe that Defendant has called and placed
6 pre-recorded voice messages to thousands of wireless telephone customers to
7 market its products and services without consent and/or after consumers revoked
8 their consent in a reasonable manner.

9 52. In order to redress injuries caused by Defendant's violations of the
10 TCPA, Plaintiff, on behalf of herself and the Classes of similarly situated
11 individuals, bring suit under the TCPA, 47 U.S.C. § 227, *et seq.*, which prohibits
12 certain unsolicited voice and text calls to cellular phones.

13 53. On behalf of Plaintiff and the Classes, Plaintiff seeks an award of
14 statutory damages to the Class members, together with costs and reasonable
15 attorneys' fees.

16 **CLASS ACTION ALLEGATIONS**

17 54. Plaintiff brings this action pursuant to Rule 23(a), Rule 23(b)(2), and Rule
18 23(b)(3) of the Federal Rules of Civil Procedure individually and on behalf
19 of the Classes, which include:

20 a. "The Pre-Recorded Voice Message Class",
21 consisting of all individuals in the United States who were
22 called by Defendant or its agent/s and/or employees, with an
23 artificial or prerecorded voice message to the individual's
24 cellular telephone, within the four years prior to the filing of the
25 Complaint.

26 b. "The Phone Call Class", consisting of all
27 individuals in the United States who were called by Defendant
28 or its agent/s and/or employees, through use of the Vulcan 7

1 Dialer, to the individual's cellular telephone, within the four
2 years prior to the filing of the Complaint.

3
4 55. Plaintiff reserve the right to modify the Class definitions as warranted
5 as facts are learned in further investigation and discovery.

6 56. Plaintiff and the Class members were harmed by Defendant's acts in
7 at least the following ways: Defendant, either directly or through its agents,
8 illegally contacted Plaintiff and the Classes via their cellular telephones by using
9 an ATDS and pre-recorded voice messages, thereby causing Plaintiff and the
10 Classes to incur certain cellular telephone charges or reduce cellular telephone time
11 for which Plaintiffs and the Class members previously paid; and Plaintiffs and
12 Class members' privacy was invaded.

13 57. The exact size of the Classes is presently unknown but can be
14 ascertained through a review of Defendant's records, and it is clear that individual
15 joinder is impracticable. Defendant made telephone calls to thousands of
16 consumers who fall into the definition of the Classes.

17 58. There are many questions of law and fact common to the claims of
18 Plaintiff and the Classes, and those questions predominate over any questions that
19 may affect individual members of the Classes.

20 59. Common questions for the Classes include, without limitation:

- 21 a. Whether Defendant made phone calls to consumers using any
22 automatic dialing system to any telephone number assigned to
23 a cellular phone service;
- 24 b. Whether the calls were placed for marketing or solicitation
25 purposes;
- 26 c. Whether Defendant obtained prior express written consent to
27 place the calls;
- 28

- 1 d. Whether Defendant placed pre-recorded voice messages to any
- 2 telephone number assigned to a cellular phone service;
- 3 e. Whether Defendant's conduct violated the TCPA;
- 4 f. Whether Class members are entitled to treble damages based on
- 5 the willfulness of Defendant's conduct;
- 6 g. Whether Defendant and its agents should be enjoined from
- 7 engaging in such conduct in the future.

8 60. Plaintiff's claims are typical of the claims of the other members of the
9 Class. Plaintiff and the Classes sustained damages as a result of Defendant's
10 uniform wrongful conduct during transactions with Plaintiff and the Classes.

11 61. Plaintiff will fairly and adequately represent and protect the interests
12 of the Classes and has retained counsel competent and experienced in complex
13 class actions.

14 62. Plaintiff has no interest antagonistic to those of the Classes, and
15 Defendant has no defenses unique to Plaintiff.

16 63. This class action is appropriate for class certification because
17 Defendant has acted or refused to act on grounds generally applicable to the Classes
18 as a whole, thereby requiring the Court's imposition of uniform relief to ensure
19 compatible standards of conduct toward the Classes, and making final injunctive
20 relief appropriate with respect to the Classes as a whole.

21 64. Defendant's practices challenged herein apply to and affect the Class
22 members uniformly, and Plaintiff's challenge of those practices hinges on
23 Defendant's conduct with respect to the Classes as a whole, not on facts or law
24 applicable only to Plaintiff.

25 65. This case is also appropriate for class certification because class
26 proceedings are superior to all other available methods for the fair and efficient
27 adjudication of this controversy given that joinder of all parties is impracticable.

1 66. This suit seeks only damages and injunctive relief for recovery of
2 economic injury on behalf of the Classes, and it expressly is not intended to request
3 any recovery for personal injury and claims related thereto. Plaintiff reserves the
4 right to expand the Class and Subclass definitions to seek recovery on behalf of
5 additional persons as warranted as facts are learned in further investigation and
6 discovery.

7 67. The damages suffered by the individual members of the Classes will
8 likely be relatively small, especially given the burden and expense of individual
9 prosecution of the complex litigation necessitated by Defendant's actions.

10 68. Thus, it would be virtually impossible for the individual members of
11 the Classes to obtain effective relief from Defendant's misconduct.

12 69. Even if members of the Classes could sustain such individual
13 litigation, it would still not be preferable to a class action, because individual
14 litigation would increase the delay and expense to all parties due to the complex
15 legal and factual controversies presented in this Complaint.

16 70. By contrast, a class action presents far fewer management difficulties
17 and provides the benefits of single adjudication, economy of scale, and
18 comprehensive supervision by a single court. Economies of time, effort and
19 expense will be fostered, and uniformity of decisions ensured.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

22 **47 U.S.C. § 227**

23 71. Plaintiff re-alleges and incorporates by reference each preceding
24 paragraph as though fully set forth herein.

25 72. Defendant placed unsolicited and unauthorized pre-recorded voice
26 messages and calls, using an ATDS, to Plaintiff's and the Class members cellular
27 telephones for the purpose of marketing products and/or services to Plaintiff and
28 the Class.

1 73. Defendant placed these calls and pre-recorded voice messages without
2 the consent of the individuals being called.

3 74. The foregoing acts and omissions of Defendant constitute numerous
4 and multiple violations of the TCPA, including but not limited to each and every
5 one of the above-cited provisions of 47 U.S.C. § 227, *et seq.*

6 75. Defendant made unsolicited and unauthorized calls to Plaintiff for the
7 purpose of marketing products and/or services to those Plaintiffs and the Class.

8 76. Defendant's conduct invaded Plaintiff's privacy and the privacy of the
9 class members.

10 77. As a result of Defendant's violations of 47 U.S.C. § 227, *et seq.*,
11 Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for
12 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

13 78. Because Defendant had knowledge that Plaintiff and the Class never
14 gave express prior consent to be called, the Court should, pursuant to 47 U.S.C. §
15 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and
16 the Classes.

17 79. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of the Class,
21 respectfully request the following relief:

- 22 a. An order certifying this matter as a class action with Plaintiff as Class
23 Representative, and designating Plaintiff's counsel as Class Counsel.
- 24 b. An award of statutory damages for each and every negligent violation
25 to each member of the Classes pursuant to 47 U.S.C. § 227(b)(3)(B);
- 26 c. An award of statutory damages for each and every knowing and/or
27 willful violation to each member of the Classes pursuant to 47 U.S.C
28 § 227(b)(3)(B);

- d. Injunctive relief prohibiting Defendant’s conduct complained of herein, pursuant to 47 U.S.C. § 227(b)(3)(A);
- e. Pre-judgment and post-judgment interest on monetary relief;
- f. Costs of suit;
- g. Reasonable attorneys’ fees pursuant to, *inter alia*, the common fund doctrine; and
- h. All other and further relief as the Court deems necessary, just, and proper.

JURY DEMAND

80. Pursuant to the eleventh amendment to the Constitution of the United States of America, Plaintiff and the Class are entitled to, and demand, a trial by jury.

Dated: February 2, 2021

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
Abbas Kazerounian, Esq.
Attorneys for Plaintiff

Additional Plaintiff’s Counsel

KAZEROUNI LAW GROUP, APC

Jason A. Ibey, Esq. (SBN: 284607)

jason@kazlg.com

321 N Mall Drive, Suite R108

St. George, Utah 84790

Telephone: (800) 400-6806

Facsimile: (800) 520-5523