

EDELSBERG LAW, PA
Scott Edelsberg, Esq.
Cal Bar No. 330990
1925 Century Park E, Ste 1700
Los Angeles, CA 90067-2740
scott@edelsberglaw.com
Attorneys for Plaintiff and Proposed Class

**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.

CLASS ACTION

**CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. §§
227, ET SEQ. (TCPA)**

JURY TRIAL DEMANDED

1. Plaintiff Jeffrey Kearns bring this action 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. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

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

4. To market it services, Defendant sends robocalls to consumers without their express written consent.

5. Through this action, Plaintiff seeks injunctive relief to stop Defendant’s unlawful conduct, which has resulted in the invasion of privacy, harassment,

1 aggravation, and disruption of the daily life of thousands of individuals. Plaintiff
2 also seeks statutory damages on behalf of himself and members of the Class, and
3 any other available legal or equitable remedies.

4 **JURISDICTION AND VENUE**

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

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

13 **PARTIES**

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

16 9. Defendant is a Delaware corporation whose principal office is located
17 at 26642 Towne Centre Drive, Foothill Ranch, CA 92610. Defendant directs,
18 markets, and provides its business activities throughout the United States, including
19 throughout the state of California.

20 10. Unless otherwise indicated, the use of Defendant’s name in this
21 Complaint includes all agents, employees, officers, members, directors, heirs,
22 successors, assigns, principals, trustees, sureties, subrogees, representatives,
23 vendors, and insurers of Defendant.

24 **THE TCPA**

25 11. The TCPA prohibits: (1) any person from calling a cellular telephone
26 number; (2) using an automatic telephone dialing system or an artificial or
27

1 prerecorded voice; (3) without the recipient’s prior express consent. 47 U.S.C. §
2 227(b)(1)(A).

3 12. The TCPA exists to prevent communications like the ones described
4 within this Complaint. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744
5 (2012).

6 13. In an action under the TCPA, a plaintiff must show only that the
7 defendant “called a number assigned to a cellular telephone service using an
8 automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*,
9 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

10 14. The Federal Communications Commission (“FCC”) is empowered to
11 issue rules and regulations implementing the TCPA. According to the FCC’s
12 findings, calls in violation of the TCPA are prohibited because, as Congress found,
13 automated or prerecorded telephone calls are a greater nuisance and invasion of
14 privacy than live solicitation calls, and such calls can be costly and inconvenient.
15 The FCC also recognized that wireless customers are charged for incoming calls
16 whether they pay in advance or after the minutes are used. *Rules and Regulations*
17 *Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-
18 278, Report and Order, 18 FCC Rcd 14014 (2003).

19 15. In 2012, the FCC issued an order further restricting automated
20 telemarketing calls, requiring “prior express written consent” for such calls. *See In*
21 *the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
22 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

23 **FACTS**

24 16. On or about March 22, 2022, Defendant caused a prerecorded voice
25 message to be transmitted to Plaintiff’s cellular telephone.

26 17. The prerecorded voice message stated that it was being sent from
27 Defendant and it was about refinancing Plaintiff’s mortgage loan.

1 18. Plaintiff is the subscriber and sole user of the number that received
2 Defendant's robocall.

3 19. When Plaintiff listened to the voice message, she was easily able to
4 determine that it was a prerecorded message. *Rahn v. Bank of Am.*, No. 1:15-CV-
5 4485-ODE-JSA, 2016 U.S. Dist. LEXIS 186171, at *10-11 (N.D. Ga. June 23, 2016)
6 ("When one receives a call, it is a clear-cut fact, easily discernible to any lay person,
7 whether or not the recipient is speaking to a live human being, or is instead being
8 subjected to a prerecorded message.").

9 20. Defendant's prerecorded message calls constitute
10 telemarketing/advertising because they promote Defendant's business, goods and
11 services.

12 21. Plaintiff did not provide Defendant with his express written consent to
13 be contacted utilizing a prerecorded message.

14 22. Given Defendant's use of prerecorded voice messages to solicit
15 consumers, Plaintiff is informed and believe that Defendant caused similar
16 prerecorded messages to be sent to at least 50 other individuals.

17 23. Defendant's unsolicited prerecorded messages caused Plaintiff harm,
18 including invasion of privacy, aggravation, and annoyance. Defendant's calls also
19 inconvenienced Plaintiff and caused disruption to his daily life.

20 **CLASS ALLEGATIONS**

21 **PROPOSED CLASS**

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

24 25. Plaintiff brings this case on behalf of the Class defined as follows:

25 All persons in the United States who, within four years
26 prior to the filing of this action through the date of class
27 certification, were sent a prerecorded voice call regarding
28 Defendant's property, goods, and/or services.

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

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

4 **NUMEROSITY**

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

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

14 **COMMON QUESTIONS OF LAW AND FACT**

15 30. There are numerous questions of law and fact common to members of
16 the Class which predominate over any questions affecting only individual members
17 of the Class. Among the questions of law and fact common to the members of the
18 Class are:

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

1 31. 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 32. 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 33. 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 34. 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 35. 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, 47 U.S.C. § 227(b) and § 64.1200(a)**
5 **(On Behalf of Plaintiff and the Class)**

6 36. Plaintiff re-alleges and incorporates the foregoing allegations set forth
7 in paragraphs 1 through 36 as if fully set forth herein.

8 37. 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 38. 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 39. 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 40. Defendant used prerecorded messages to make non-emergency
25 telephone calls to the telephones of Plaintiff and other members of the Class.
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1 41. Defendant did not have prior express written consent to call the
2 telephones of Plaintiff and the other members of the putative Class when its calls
3 were made.

4 42. Defendant has, therefore, violated §§ 227(b)(1)(A)(iii),
5 64.1200(a)(1)(iii), and 64.1200(a)(2) by using prerecorded messages to make non-
6 emergency telephone calls to the telephones of Plaintiff and the other members of
7 the putative Class without their consent.

8 43. Defendant knew that it did not have consent to make these calls, and
9 knew or should have known that it was using prerecorded messages. The violations
10 were therefore willful or knowing.

11 44. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the
12 TCPA, Plaintiff and the other members of the putative Class were harmed and are
13 each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and
14 the members of the Class are also entitled to an injunction against future calls. *Id.*

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, pray for
17 the following relief:

- 18 a) An order certifying this case as a class action on behalf of the Class as
19 defined above, and appointing Plaintiff as the representatives of the
20 Class and Plaintiff's counsel as Class Counsel;
- 21 b) An award of actual and statutory damages for Plaintiff and each
22 member of the Class;
- 23 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et*
24 *seq.*, Plaintiff seeks for himself and each member of the Class \$500.00
25 in statutory damages for each and every violation pursuant to 47 U.S.C.
26 § 277(b)(3)(B);
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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.

18 **DOCUMENT PRESERVATION DEMAND**

19 Plaintiff demands that Defendant take affirmative steps to preserve all records,
20 lists, electronic databases or other itemization of telephone numbers associated with
21 Defendant and the calls as alleged herein.

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1 Dated: June 27, 2022

2 Respectfully submitted,

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4 **EDELSBERG LAW, PA**

5 /s/ Scott A. Edelsberg

6 Scott Edelsberg, Esq.

7 Cal Bar No. 330990

8 1925 Century Park E, Ste 1700

9 Los Angeles, CA 90067-2740

10 scott@edelsberglaw.com

11 *Attorneys for Plaintiff and Proposed Class*

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