

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
JASPER DIVISION**

VINCENT ADAMS, and all those similarly situated,)	
)	
)	
Plaintiffs,)	Case No.:
)	
v.)	CLASS ACTION
)	
EXPRESS OIL CHANGE, L.L.C.)	JURY DEMAND
)	
Defendant.)	

COMPLAINT

COMES NOW Plaintiff Vincent Adams, by and through counsel, in the above styled cause, and states his Complaint as follows:

PARTIES

1. Plaintiff Vince Adams is a resident of Walker County, Alabama, over 19 years of age, and is competent to bring this action.
2. Defendant Express Oil Change, L.L.C. (hereinafter, "Express Oil") is a Delaware organization with its principal place of business located in Hoover, Alabama and was doing business in Walker County, Alabama at all times material to this Complaint.
3. Jurisdiction is proper in this Court pursuant to 28 U.S.C. §1331. *See Mims v. Arrow Financial Services, Inc.*, 132 S.Ct. 740 (2012).
4. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) because a substantial portion of the facts and circumstances that give rise to the cause of action occurred in this District.

JURISDICTIONAL BACKGROUND

5. Congress enacted the TCPA in 1991 to address certain telemarketing practices widely considered invasive of consumer privacy.

6. An automatic telephone dialing system (sometimes called “autodialer”) is “equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator to dial the numbers[,]” and has the capacity to dial such numbers. *Id.* § 227(a)(1). The term extends to equipment that has the capacity to dial numbers without human intervention. *See In The Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C.R. 14014, 14093 (2003).

7. With the limited exception of calls made for emergency purposes, the TCPA bans *all* calls to cell phones placed through an autodialer, regardless of whether they solicit the sale of goods or services, unless the recipient of the call provides “prior express consent” to receive the calls. 47 U.S.C. § 227(b)(1)(A); 47 C.F.R. § 64.1200(a)(1).

8. The TCPA prohibits the use of an automatic telephone dialing system to “make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) . . . to any telephone number assigned to a . . . cellular telephone service.” 47 U.S.C. § 227(b)(1)(A)(iii).

9. The prohibition against auto dialed calls applies to text message calls as well as voice calls. *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003) (affirming that the prohibition against automatic telephone dialing in § 227(b)(1) “encompasses both voice calls and text calls to wireless numbers

including, for example, short message service (SMS) calls”). Congress conferred on the FCC the authority to “prescribe regulations to implement” the TCPA. 47 U.S.C. § 227(b)(2); *see also id.* § 201(b) (“The Commission may prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this chapter.”).

10. However, telemarketing calls or texts to cellular telephones require prior express *written* consent of the called party before making telemarketing calls or sending texts with telemarketing content. *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1841 ¶¶18, 20 (2012) (“...we require prior express written consent for telemarketing robocalls to wireless numbers and residential lines.”) (“...we require prior express written consent for all telephone calls using an automatic telephone dialing system or a prerecorded voice to deliver a telemarketing message to wireless numbers and residential lines.”).

11. To qualify as a case or controversy, a plaintiff in federal court must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016).

12. *Spokeo* confirms that either tangible or intangible injuries can satisfy the requirement of concreteness. *Id.* at 1549

13. Where the injury is intangible, *Spokeo* summarizes two approaches to meet this requirement. First, courts should consider “whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts. *Id.*

14. As the Supreme Court noted, “the law has long permitted recovery by certain tort victims even if their harms may be difficult to prove or measure. *See, e.g.,* Restatement (First) of Torts §§ 569 (libel), 570 (slander per se) (1938).” *Id.* at 1549.

15. Second, Congress may “elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law” *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578 (1992)). It “has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before.” *Id.*

16. The Court also noted that merely asserting a “bare procedural violation, divorced from any concrete harm,” will not satisfy the concreteness requirement. *Id.* This observation has little application to claims under the TCPA, since those claims are not based on “bare procedural” rights, but rather on substantive prohibitions of actions directed toward specific consumers. Even for procedural rights, however, a “risk of real harm” can satisfy Article III. *Id.*

17. The Court stated: “[T]he violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact. In other words, a plaintiff in such a case need not allege any *additional* harm beyond the one Congress has identified.” *Id.* The Court offered two examples:

*“‘[I]nability to obtain information’ that Congress had decided to make public is a sufficient injury in fact to satisfy Article III”

*“[F]ailure to obtain information subject to disclosure under the Federal Advisory Committee Act ‘constitutes a sufficiently distinct injury to provide standing to sue’....” *Id.* at 1549-50.

18. In *Spokeo*, the defendant sought a ruling that would have eviscerated causes of action seeking statutory damages. But the Supreme Court did no such thing. Instead, it issued a

narrow ruling remanding the case to the Ninth Circuit solely on the basis that it failed to address the extent to which Robins' injuries were "concrete" as opposed to merely particularized, notwithstanding prior Supreme Court precedent requiring a finding of both. *Id.* at 1545. The Supreme Court explicitly took no position on whether Robins' injuries were in fact concrete for standing purposes. *Id.* at 1550.

19. *Spokeo* thus created no new law; it merely remanded the case to allow the Ninth Circuit to conduct the proper analysis. As Justice Alito noted, "[w]e have made it clear time and time again that an injury in fact must be both concrete *and* particularized." *Id.* at 1549 (emphasis in original).

20. Unwanted phone calls and texts cause concrete harm. For consumers with prepaid cell phones or limited-minute plans, unwanted calls cause direct, concrete, monetary injury by depleting limited minutes that the consumer has paid for or by causing the consumer to incur charges for calls. In addition, all ATDS calls deplete a cell phone's battery, and the cost of electricity to recharge the phone is also a tangible harm. While certainly small, the cost is real, and the cumulative effect could be consequential.

21. Such calls also cause intangible injuries, regardless of whether the consumer has a prepaid cell phone or a plan with a limited number of minutes. The main types of intangible harm that unlawful calls cause are (1) invasion of privacy, (2) intrusion upon and occupation of the capacity of the consumer's cell phone, and (3) wasting the consumer's time or causing the risk of personal injury due to interruption and distraction.

22. One of the ways that *Spokeo* identifies to establish that an intangible injury is

concrete is to show that it “has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.” *Spokeo* at 1549. Invasion of privacy is just such an intangible harm recognized by the common law. Almost all states recognize invasion of privacy as a common law tort as does Alabama. *See* Eli A. Meltz, No Harm, No Foul? Attempted Invasion of Privacy and the Tort of Intrusion Upon Seclusion, 83 *Fordham L. Rev.* 3431, 3440 (May, 2015) (state-by-state survey; “Currently, the vast majority of states recognize the intrusion strand of invasion of privacy either under common law or by statute”).

23. The Eleventh Circuit has recognized the statutory scheme of the TCPA is intended to protect the privacy interests of consumers. *See Osorio v. State Farm Bank*, 746 F. 3d. 1242, 1258 (11th Cir. 2014) (“To state the obvious, autodialed calls negatively affect residential privacy regardless of whether the called party pays for the call.”).

24. The right to privacy is also protected under the Constitution. *See, e.g., Lawrence v. Texas*, 539 U.S. 558 (2003); *Eisenstadt v. Baird*, 405 U.S. 438 (1972). *See also Winston v. Lee*, 470 U.S. 753, 758 (1985) (characterizing the Fourth Amendment as protecting expectations of privacy, “the most comprehensive of rights and the right most valued by civilized men”).

25. Even if invasion of privacy were not a harm recognized as redressable through a common law tort claim, it would meet the requirement of concreteness as interpreted by *Spokeo* because Congress so clearly identified it as a legally cognizable harm. According to the *Spokeo* majority, “because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important. Thus, we said in *Lujan*

that Congress may ‘elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” *Spokeo* at 1549.

26. The TCPA’s sponsor, Senator Hollings, emphasized: “Computerized calls are the scourge of modern civilization. They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone right out of the wall.” 137 Cong. Rec. 30,821–30,822 (1991). Thus, Congress repeatedly identified the intangible harm of invasion of privacy as one of its primary concerns when it enacted the TCPA. As the Court noted in *Spokeo*, its judgment that this harm is legally cognizable should be given great weight.

27. A number of courts have held that temporary electronic intrusion upon another person’s computerized electronic equipment constitutes trespass to chattels. Courts have applied this tort theory to unwanted telephone calls. *Czech v. Wall St. on Demand*, 674 F.Supp.2d 1102, 1122 (D. Minn. 2009) (declining to dismiss cell phone owner’s trespass to chattels claim against sender of unwanted text messages). Even if the consumer does not answer the call or hear the ring tone, the mere invasion of the consumer’s electronic device can be considered a trespass to chattels, just as “plac[ing a] foot on another’s property” is trespass. *Spokeo*, at 1551 (Thomas, J.,concurring).

28. The harm caused by unwanted robocalls to cell phones has a close relationship to the harm recognized by this ancient common law tort — a tort that protects fundamental property rights. Indeed, the TCPA can be viewed as merely applying this common law tort to a 21st-century form of personal property and a 21st-century method of intrusion. Applying this ancient tort to these calls and making redress more readily available is particularly appropriate since

electronic intrusion is so much easier, and so much more readily repeated, than physical misuse of a chattel.

29. The Eleventh Circuit has recognized that “the occupation of the recipient’s telephone line and fax machine” is a sufficient injury-in-fact for a TCPA claim asserting violations of the statute’s junk fax provisions. *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1250–1251 (11th Cir. 2015) (occupation of fax machine for one minute is sufficient, even though there was no evidence that anyone ever printed or saw the faxes).

30. Another intangible harm caused by these illegal calls is that they require the plaintiff to tend to them and waste the plaintiff’s time as illustrated in the post-*Spokeo* decision of *Booth v. Appstack, Inc.*, 2016 WL 3030256, *5 (W.D. Wash. May 25, 2016).

32. When it enacted the TCPA, Congress repeatedly emphasized the nuisance aspect of robocalls, showing that it considered the interruptions that they cause and the time they cause consumers to waste to be one of the harms it sought to remedy as noted above in Senator Hollings statement, “They wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed.” 137 Cong. Rec. 30,821–30,822 (1991).

32. In the post-*Spokeo* decision, *Rogers v. Capital One Bank (USA), N.A.*, 2016 WL 3162592 (N.D. Ga. June 7, 2016), the Court found that a violation of the TCPA was a concrete injury. (“Here, the Plaintiffs alleges that the Defendant made unwanted phone calls to their cell phone numbers, in violation of the TCPA. As the Eleventh Circuit has held, a violation of the TCPA is a concrete injury. Because the Plaintiffs allege that the calls were made to their personal cell phone numbers, they have suffered particularized injuries because their cell phone lines were

unavailable for legitimate use during the unwanted calls. The Plaintiffs have alleged sufficient facts to support standing.”) *Rogers* *2, citing *Palm Beach Golf Ctr.-Boca, Inc. v. John G. Sarris, D.D.S., P.A.*, 781 F.3d 1245, 1252 (11th Cir. 2015).

FACTUAL ALLEGATIONS

33. Beginning in or around November 2017, Plaintiff Vincent Adams received text messages from Defendant Express Oil telling him to click on an embedded link to view a marketing ad campaign coupon.

34. When the link is clicked, an electronic coupon is opened with specials for that marketing campaign.

35. Upon seeing the text, Plaintiff immediately replied with “Stop.”

36. However, Defendant Express Oil continued to send the marketing texts to Plaintiff’s cellular telephone.

37. Defendant Express Oil continues to send the marketing texts to Plaintiff.

38. On November 16th and November 22nd, Defendant Express Oil sent additional marketing text messages to Plaintiff’s cellular telephone each one containing a link to coupons for marketing campaigns.

39. Plaintiff immediately replied “Stop” to each of these texts as well, but Defendant Express Oil did not stop sending the texts.

40. Defendant Express Oil has continued to send additional marketing texts to Plaintiff’s cellular telephone, including marketing texts sent on December 6th, December 8th, December 14th and December 23rd.

41. Plaintiff has never given express written consent to Defendant Express Oil to text

him using an Automated Telephone Dialing System (“ATDS”) or otherwise.

42. Further, Plaintiff expressly revoked any consent Defendant Express Oil could Have believed it had when he responded to the first text he received from Defendant Express Oil with “Stop.”

43. However, Defendant Express Oil continued to text Plaintiff sending six additional Texts with the same or similar content.

44. Defendant Express Oil was unconcerned that it did not have prior express consent to send the marketing texts.

45. Defendant Express Oil ignored Plaintiff’s express revocation of any prior express consent it could have been operating under and continued to send marketing and advertisement texts to Plaintiff even after Plaintiff expressly revoked on multiple occasions any prior consent Defendant could have believed it had to send marketing texts.

46. The unwanted texts by Defendant Express Oil were an unwelcome intrusion upon Plaintiff’s privacy and his right to be left alone from unwanted intrusions.

47. The unwanted texts by Defendant Express Oil also constituted an electronic Intrusion upon Plaintiff’s electronic equipment - his cellular telephone.

48. Defendant Express Oil tied up Plaintiff’s telephone from use when it sent him the unwanted texts.

49. Defendant Express Oil illegally occupied Plaintiff’s telephone when it sent the unwanted texts rendering it unavailable for use when receiving the texts sent by Defendant Express Oil.

50. The texts sent by Defendant Express Oil to Plaintiff caused an interruption to

Plaintiff's daily tasks and caused him to waste time tending to and/or responding to the texts.

51. The prohibitions contained in the Telephone Consumer Protection Act against Auto dialed calls applies equally to text message calls as voice calls. *See In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

52. Defendant Express Oil illegally used an autodialer to call/text Plaintiff's cell phone Without obtaining prior express written consent to do so in violation of the Telephone Consumer Protection Act (TCPA) 47 U.S.C. § 227, et seq. ("TCPA").

53. Defendant Express Oil illegally used a predictive dialer to call/text Plaintiff's Wireless numbers without permission to do so in violation of the TCPA.

54. Defendant Express Oil illegally used pre-recorded or preset calls/texts to call Plaintiff's wireless number without permission to do so in violation of the TCPA.

55. Defendant Express Oil has continually harassed Plaintiff with texts to Plaintiff's cell phone without having consent to call his cell number.

56. The volume and type of calls/texts are harassing as the intent and motive behind them are to harass Plaintiff into using Defendant's services.

57. Plaintiff instructed Defendant Express Oil to cease and desist making calls/texts to his cellular telephone number expressly revoking any consent Defendant Express Oil may have thought it had to call/text his cellular telephone.

58. Defendant Express Oil continued to use an autodialer and/or predictive dialers to Make repeated telephone calls/texts to Plaintiff's cellular telephone leaving prerecorded or preset texts.

59. All telephone contact by Defendant Express Oil with Plaintiff's cellular telephone occurred via an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1), and all calls/texts that are the subject of this Complaint occurred within four years of the filing of this Complaint.

60. The telephone number that Express Oil used to contact Plaintiff was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

61. The complained of telephone calls/texts constituted calls not for emergency Purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).

62. Plaintiff did not give prior express consent to call his cellular telephone, and even instructed Defendant Express Oil not to call/text his cellular telephone number utilizing an "artificial or prerecorded voice" or calls placed by an "automatic telephone dialing system," within the meaning of 47 U.S.C. § 227(b)(1)(A).

63. Express Oil's telephone calls/texts to Plaintiff's cellular phone utilizing an "automatic telephone dialing system" for non-emergency purposes and in the absence of Plaintiff's prior express written consent violated 47 U.S.C. §227(b)(1)(A).

64. Defendant Express Oil illegally used a predictive dialer to call/text Plaintiff's cell Phone without permission to do so in violation of the Telephone Consumer Protection Act (TCPA).

65. Plaintiff did not provide express written consent to call/text his cell phone with an autodialer or with a predictive dialer and/or revoked such consent after receiving the first marketing text.

66. Plaintiff never gave written consent to call/text his cell phone with pre-recorded calls/texts.

67. The calls/texts by Defendant Express Oil were done and did have the effect of harassing Plaintiff and were also an invasion of his privacy by an intrusion upon seclusion and resulted in actual damages to each Plaintiff.

68. This series of abusive calls/texts by Defendant Express Oil by and through its employees, agents, and/or representatives caused Plaintiff stress and anguish as a result of these abusive calls.

69. Defendant Express Oil's repeated texts to Plaintiff, and its violation of law, was an invasion of Plaintiff's privacy and his right to be left alone.

70. Plaintiff has suffered actual damages as a result of these illegal communications by Defendant Express Oil in the form of anger, anxiety, emotional distress, frustration, upset, amongst other negative emotions, as well as suffering from unjustified and abusive invasions of personal privacy.

71. Defendant Express Oil communicated with Plaintiff when it knew or should have known it did not have prior express written authorization to contact Plaintiff via a wireless number.

COUNT I
VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION
ACT ("TCPA") 47 U.S.C. § 227, et seq.

72. Plaintiff incorporates by reference all of the paragraphs of this Complaint as though fully stated herein.

73. Defendant Express Oil has repeatedly violated the TCPA by the calls/texts made to Plaintiff, specifically the numerous texts/calls by illegal automatic dialers and/or predictive

dialers that have been unleashed against Plaintiff by Express Oil, including but not limited to, the texts/calls to Plaintiff at all hours of the day and night, including calls to Plaintiff's wireless number, that have invaded his privacy, constituted an electronic intrusion upon Plaintiff's electronic equipment, tying up and illegally occupying his cellular telephone.

74. Defendant Express Oil has repeatedly violated the TCPA by the texts/calls made to Plaintiff, specifically the numerous texts/calls by illegal pre-recorded and/or pre-set messages that have been unleashed against Plaintiff by Defendant, including but not limited to, the texts/calls to Plaintiff's cell phone for which Defendant had no express written consent from Plaintiff.

75. There is no exception or justification for the numerous violations of the TCPA by Defendant Express Oil.

76. Each call is a separate violation and entitles Plaintiff to statutory damages against Defendant Express Oil in the amount of at least \$500.00 per call, and Plaintiff requests that since the violations were made intentionally or recklessly that the violations be assessed a statutory damage of \$1,500.00 per call, in accordance with 47 U.S.C. § 227(b)(3).

77. All actions taken by Defendant Express Oil were taken with malice, were done willfully or recklessly, were done with either the desire to harm Plaintiff, were done with reckless disregard of the law and/or with the knowledge that its actions would very likely harm Plaintiff and/or that its actions were taken in violation of the TCPA and/or that knew or should have known that its actions were in reckless disregard of the TCPA.

78. All of the violations of the TCPA proximately caused the injuries and damages set forth in this Complaint.

WHEREFORE, Plaintiff demands judgment against Defendant Express Oil for statutory, actual, compensatory, and/or punitive damages an amount to be determined by the trier of fact, together with attorneys' fees, interest from the date of injury and the costs and expenses of this proceeding. Further, Plaintiff prays for further and other just and equitable relief against Defendant.

COUNT II
NEGLIGENT, RECKLESS, WANTON, MALICIOUS
AND/OR INTENTIONAL CONDUCT

79. All paragraphs of this Complaint are expressly adopted and incorporated by reference as if fully set forth herein.

80. Defendant Express Oil owed a duty to Plaintiff not to place telephone calls/texts to Plaintiff's cellular telephone in violation of state and/or federal law, not to continually harass Plaintiff with advertisements and marketing in violation of state and/or federal law.

81. Defendant Express Oil had a duty under Alabama law to act reasonably under the circumstances.

82. Defendant Express Oil violated this duty under Alabama law by contacting Plaintiff on his cellular telephone in violation of state and/or federal law.

83. Defendant Express Oil violated its duties to Plaintiff and such violations were made intentionally, recklessly, willfully, wantonly, maliciously, and/or negligently as Defendant refused to comply with all the duties that Defendant had.

84. Plaintiff has been damaged as a proximate result of all Defendant Express Oil's wrongful conduct as set forth in this Complaint, including, but not limited to, Plaintiff suffered actual damages for worry, upset, anger, frustration and mental suffering, pain, and anguish.

WHEREFORE, Plaintiff demands judgment against Defendant Express Oil for actual, compensatory, and/or punitive damages in an amount to be determined by the trier of fact, together with attorneys' fees, interest from the date of injury and the costs and expenses of this proceeding. Further, Plaintiff prays for further and other just and equitable relief.

COUNT III
NEGLIGENT HIRING, TRAINING, AND/OR SUPERVISION
OF EMPLOYEES AND/OR AGENTS

85. All paragraphs of this Complaint are expressly adopted and incorporated by reference as if fully set forth herein.

86. Defendant Express Oil negligently, wantonly, willfully, recklessly, and/or intentionally hired, retained, and/or supervised incompetent personnel, who were allowed or encouraged to violate the law as was done to Plaintiff as stated throughout this Complaint, including making texts/calls to Plaintiff's cellular telephone without consent and by continually harassing Plaintiff on his cellular telephone and is thereby responsible to the Plaintiff for the wrongs committed against Plaintiff and the damages suffered by Plaintiff.

87. Defendant Express Oil's employees, agents, and/or representatives committed the violations of state and/or federal law as set forth in this Complaint.

88. Defendant Express Oil was negligent or wanton in the retention, hiring, training, and/or supervision of its employees and/or agents.

89. The employees and/or agents of Defendants Express Oil while acting in Furtherance of each one's employment or agency by contacting Plaintiff when they knew, or should have known, that such contact by calling Plaintiff's cellular telephone and continually harassing Plaintiff violated state and/or federal law was performed in the line and scope of each

one's respective employment or agency and each was incompetent to perform his/her duties and Defendant did know, or should have known, of such incompetence.

90. The negligent or wanton conduct of those employees and/or agents of Defendant Express Oil while acting in furtherance of each one's employment or agency and in the line and scope of each one's respective employment or agency lead to and/or proximately caused Plaintiff to suffer damages as set forth in this Complaint.

WHEREFORE, Plaintiff demands judgment against Defendant Express Oil for actual, compensatory, and/or punitive damages in an amount to be determined by the trier of fact, together with attorneys' fees, interest from the date of injury and the costs and expenses of this proceeding. Further, Plaintiff prays for further and other just and equitable relief against Defendant Express Oil.

COUNT IV
INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

91. All paragraphs of this Complaint are expressly adopted and incorporated by reference as if fully set forth herein.

92. Alabama law recognizes Plaintiff's right to be free from invasions of privacy and Defendant Express Oil violated Alabama state law as described in this Complaint, including, but not limited to, sending numerous unwanted texts to Plaintiff's cellular telephone without express permission in violation of state and/or federal law.

93. Defendant Express Oil intentionally, recklessly, and/or negligently interfered,

physically or otherwise, with the solitude, seclusion and or private concerns or affairs of the Plaintiff, including, but not limited to, sending numerous texts to Plaintiff's cellular telephone thereby invading Plaintiff's privacy in violation of state and/or federal law.

94. Defendant Express Oil intentionally, recklessly, and/or negligently caused emotional harm to Plaintiff by engaging in highly offensive conduct in the course of its marketing campaign by sending numerous unwanted texts without Plaintiff's permission and after Plaintiff told it to stop sending the unwanted texts thereby invading and intruding upon Plaintiff's right to privacy.

95. Plaintiff had and has a reasonable expectation of privacy in Plaintiff's solitude and seclusion pertaining to the use of his cellular telephone.

96. The conduct of Defendant Express Oil in engaging in the above-described illegal conduct against Plaintiff, resulted in multiple intrusions and invasions of privacy by this Defendant which occurred in a way that would be and is highly offensive to a reasonable person in that position in our society. People are tired of receiving unwanted calls and texts on their cellular telephones since their cellular telephones are one of the most intimate possessions they have and is with them twenty-four hours a day, seven days a week.

97. As a result of such intrusions and invasions of privacy, Plaintiff is entitled to compensatory and/or punitive damages from Defendant Express Oil.

98. All the above acts and omissions of Defendant Express Oil by and through its agents and/or employees were committed with intent, wantonness, and/or recklessness and as such Defendant is subject to punitive damages.

WHEREFORE, Plaintiff demands judgment against Defendant Express Oil for actual, compensatory, and/or punitive damages in an amount to be determined by the trier of fact, together with attorneys' fees, interest from the date of injury and the costs and expenses of this proceeding. Further, Plaintiff prays for further and other just and equitable relief.

COUNT V
TRESPASS TO CHATTELS

99. All paragraphs of this Complaint are expressly adopted and incorporated by reference as if fully set forth therein.

100. Defendant Express Oil unlawfully interfered with Plaintiff's use of his cellular telephone by sending unwanted texts which constituted an intrusion upon and occupation of the capacity of the Plaintiff's cellular telephone.

101. Plaintiff had his cellular telephone in his possession and each time Defendant Express Oil sent Plaintiff an unwanted text marketing its goods and services, Defendant, without authorization, unlawfully interfered with Plaintiff's possession of his cellular telephone.

102. Defendant Express Oil's interference with Plaintiff's cellular telephone sending unwanted and unauthorized texts to Plaintiff's cellular telephone caused his cellular telephone to be tied up and not available for authorized texts and calls and was an occupation of and unlawful interference with Plaintiff's enjoyment of his personal property.

103. The unwanted and unauthorized marketing texts sent by Defendant unlawfully barred Plaintiff's access to his cellular telephone when the texts were sent.

104. The intentional dispossession of Plaintiff's use of his cellular telephone when Defendant intentionally took control of Plaintiff's cellular telephone by sending the unwanted

and unauthorized marketing texts affected Plaintiff's possessory interests in his cellular telephone without his consent.

105. Defendant Express Oil knew or should have known sending the unwanted and unauthorized marketing texts to Plaintiff's cellular telephone would and did physically interfere with Plaintiff's use of his cellular telephone as was Defendant's intention.

106. Plaintiff was intentionally deprived the use of his cellular telephone when Defendant Express Oil sent the unwanted and unauthorized marketing texts to his cellular telephone and caused harm to Plaintiff by depriving him of his ability to use his cellphone when the texts were sent as well as caused him to take the time out of his daily schedule to read and respond to the texts causing Plaintiff to suffer damages.

107. As a result, Plaintiff was damaged by the texts sent by Defendant as they impaired Plaintiff's use of his property and caused the loss of its use as well as his time when receiving, reading and responding to the texts multiple times instructing Defendant to stop sending the unwanted and unauthorized marketing text messages.

WHEREFORE, Plaintiff demands judgment against Defendant Express Oil for actual, compensatory, and/or punitive damages in an amount to be determined by the trier of fact, together with attorneys' fees, interest from the date of injury and the costs and expenses of this proceeding. Further, Plaintiff prays for further and other just and equitable relief.

COUNT VI
CLASS CLAIMS AGAINST DEFENDANT EXPRESS OIL FOR VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 et seq.
Class Action Allegations

108. All paragraphs of this Complaint are expressly adopted and incorporated by

reference as if fully set forth herein.

109. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of a class of all other persons or entities similarly situated throughout the United States.

110. Upon information and belief, pursuant to a uniform policy and procedure, Express Oil and/or its authorized agents obtained cellular telephone numbers for which it did not obtain prior express permission to call/text before calling/texting, and then engaged in widespread calling/texting of cellular telephones without express permission to do so in violation of the TCPA.

111. Upon information and belief, Express Oil has made thousands of calls/texts to the cellular telephones of hundreds, or possibly thousands of individuals and entities throughout the United States via auto-dialer without first obtaining prior express consent and/or by using artificial prerecorded voices and/or pre-set messages.

112. The classes of persons Plaintiff proposes to represent include:

(a) All persons or entities within the United States who, within the four years prior to the filing of the Complaint through the date the class is certified, received marketing telephone calls/texts to their cellular telephone without Express Oil first obtaining prior express written consent to call/text using an automatic telephone dialing system.

(b) All persons or entities within the United States who, within the four years prior to the filing of the Complaint through the date the class is certified, received marketing telephone calls/texts to their cellular telephone after revoking consent to receive marketing calls/texts using an automatic telephone dialing system.

113. The class as defined above is identifiable by Defendant's records, contact lists, phone records, and phone number databases. On information and belief, the potential class members number in the hundreds, and possibly thousands, and constitute a class so numerous that joinder of all class members is impracticable.

114. Plaintiff is a member of the class.

115. There are questions of law and fact common to Plaintiff and to the proposed class, including but not limited to the following:

a. Whether Defendant violated the TCPA by engaging in sending advertisements and/or marketing texts via auto-dialer without first obtaining the prior express written consent required under the TCPA;

b. Whether Defendant obtained prior express written consent from consumers before sending advertisements and/or marketing texts to consumers' cell phones;

c. Whether any prior express written consent given before the advertisements and/or marketing texts were sent was subsequently revoked prior to Defendant sending texts to consumers' cell phones;

d. Whether the Plaintiff and the members of the class are entitled to statutory damages as a result of Defendant Express Oil's actions.

116. Plaintiff's claims are typical of the claims of the class.

117. Plaintiff is an adequate representative of the classes because his interests do not conflict with the interests of the class, and he will fairly and adequately protect the interests of the class.

118. Common questions of law and fact predominate over questions affecting only

individual members of the class and a class action is the superior method for fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendants and/or their agents.

119. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

120. Plaintiff is capable of and is willing to represent the other members of the class.

Legal Claims

First Class Claim – Marketing Calls/Texts to Cellular Telephones Without Obtaining Prior Express Written Consent

121. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth herein.

122. The TCPA prohibits the making of any marketing call/text —without prior express written consent of the called party—by using any automatic telephone dialing system to a cellular telephone.

123. Defendant Express Oil violated the TCPA by sending advertisements and/or marketing texts to Plaintiff's cell phone via auto-dialer without first obtaining prior express written consent and/or continuing to send marketing texts following the called party's revocation of consent.

124. Defendant failed to obtain prior express written consent before texting Plaintiff's cellular telephone number via auto-dialer in violation of the TCPA; or in the alternative, if it

could be determined consent had been given at some point, Plaintiff revoked the consent prior to Defendant texting Plaintiff's cellular telephone.

125. Defendant has, therefore, violated the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

126. As a result of Defendant Express Oil's illegal conduct as alleged herein, the members of the class suffered actual damages and, under §227(b)(3)(B), are each entitled, *inter alia*, to a minimum of \$500.00 in damages for each such violation of the TCPA.

Second Class Claim - Injunctive Relief

127. Plaintiff refers to and incorporates all previous paragraphs as though fully set forth herein.

128. Defendant, its authorized agents, vendors, or contractors have possession, custody and control of the business records, databases, computer systems and other information and equipment necessary to identify the members of the class, including but not limited to the names, addresses and cellular telephone numbers of the class members. Unless immediate injunctive relief is ordered, Defendants their authorized agents, vendors, or contractors may alter, erase, delete, destroy or otherwise dispose of and remove such systems, records and equipment. For this reason, Plaintiff is entitled to an order prohibiting and enjoining Defendant, its authorized agents, vendors, or contractors from altering, deleting, destroying or otherwise disposing of any documents, records, databases or computer systems that are necessary to identify the members of the class.

129. The TCPA expressly authorizes injunctive relief to prevent further violations of the TCPA.

130. The Plaintiff, acting on behalf of the Class, respectfully petitions this Court to order Defendant Express Oil, including, but not limited to its employees, agents and/or other affiliates, to immediately cease texting/calling cellular telephones without first obtaining prior express written consent to text/call cellular telephones in violation of the TCPA.

Relief Sought

131. Plaintiff, on behalf of himself and the Class, prays for the following relief:

1. An order certifying the Class as defined above;
2. An injunction requiring Defendant to cease all marketing cellular telephone texts/calls without prior express written consent and restraining Defendant from altering, erasing, changing, deleting, destroying or otherwise removing or disposing of any documents, records, databases, computer systems and the like currently in its possession or control or in the possession or control of its agents and contractors which are used or useful in identifying all persons to whom Defendant has sent texts/calls to a cellular telephone without prior express consent;
3. An order preliminarily and permanently enjoining Defendant from engaging in the practices challenged herein;
4. A minimum of \$500.00 in damages for each violation of the TCPA;
5. Reasonable attorneys' fees and costs; and
6. Such further and other relief the Court deems appropriate.

s/Wesley L. Phillips
Wesley L. Phillips (PHI053)
Attorney for Plaintiff

OF COUNSEL:
PHILLIPS LAW GROUP, LLC
Post Office Box 362001

Birmingham, Alabama 35236
Telephone: (205) 383-3585
Facsimile: (800) 536-0385
Email: wlp@wphillipslaw.com

PLAINTIFF DEMANDS A TRIAL BY JURY IN THIS MATTER .

 s/Wesley L. Phillips
OF COUNSEL

**PLEASE SERVE SUMMONS AND COMPLAINT BY CERTIFIED MAIL AS
FOLLOWS:**

Express Oil Change, L.L.C.
c/o Business Filings Inc.
2 North Jackson Street, Suite 605
Montgomery, Alabama 36104

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Express Oil Change Hit with Class Action Over Unwanted Text Messages](#)
