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

JAMES ANDREWS, and CARMEN) Case No. 5:21-cv-2157
ANDREWS, individually and on behalf)
of all others similarly situated,) **CLASS ACTION**

Plaintiff,) **COMPLAINT FOR VIOLATIONS**
) **OF:**

vs.)

AMRESORTS, L.P., ALG) 1. NEGLIGENT VIOLATIONS OF
INTEGRATED HOLDINGS CORP) THE TELEPHONE
DBA APPLE LEISURE GROUP and) CONSUMER PROTECTION
DOES 1 through 10, inclusive,) ACT [47 U.S.C. §227(b)];
Defendants.) 2. WILLFUL VIOLATIONS OF
) THE TELEPHONE
) CONSUMER PROTECTION
) ACT [47 U.S.C. §227(b)]; and
) 3. CALIFORNIA PENAL CODE §
) 632.7

DEMAND FOR JURY TRIAL

Plaintiffs JAMES ANDREWS and CARMEN ANDREWS (“Plaintiffs”),
individually and on behalf of all others similarly situated, allege the following upon
information and belief based upon personal knowledge:

1 Defendants and was acting within the course and scope of said agency and/or
2 employment with the full knowledge and consent of each of the other Defendants.
3 Plaintiff is informed and believes that each of the acts and/or omissions complained
4 of herein was made known to, and ratified by, each of the other Defendants.

5 **FACTUAL ALLEGATIONS**

6 14. Beginning in or around September of 2020, Defendants contacted
7 Plaintiffs on Plaintiffs' cellular telephone in an attempt to solicit Plaintiff to
8 purchase Defendants' services.

9 15. Plaintiff James's telephone number ends in 3751.

10 16. Plaintiff Carmen's telephone number ends in 5696.

11 17. Defendants called Plaintiff James numerous times, for numerous
12 different numbers, including but not limited to a call placed on September 10, 2020,
13 at 12:21 PM.

14 18. Defendants called Plaintiff Carmen numerous times, from numerous
15 different numbers, including but not limited to a call placed on September 12, 2020
16 at 12:57 PM.

17 19. Defendants used an "automatic telephone dialing system" as defined
18 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiffs seeking to solicit its services.

19 20. Defendants contacted or attempted to contact Plaintiffs from multiple
20 telephone numbers confirmed to belong to Defendants, including without
21 limitation (760) 246-1500 and (760) 845-1554.

22 21. Defendants' calls constituted calls that were not for emergency
23 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

24 22. Defendants' calls were placed to telephone number assigned to a
25 cellular telephone service for which Plaintiffs incur a charge for incoming calls
26 pursuant to *47 U.S.C. § 227(b)(1)*.

27 23. Plaintiffs are not, and have never been, a customer of Defendants',
28 and therefore Defendants did not possess Plaintiffs' "prior express consent" to

1 receive calls using an automatic telephone dialing system or an artificial or
2 prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

3 24. Defendants' calls constitute solicitation calls pursuant to 47 C.F.R. §
4 64.1200(c)(2) as they were attempts to promote or sell Defendants' services.

5 25. Plaintiffs received numerous solicitation calls from Defendants within
6 a 12-month period. During each conversation between Plaintiffs and Defendants,
7 Plaintiffs maintained a reasonable expectation of privacy. That is, Plaintiffs had a
8 reasonable expectation during their phone conversations with Defendants that the
9 conversations would neither be recorded nor overheard.

10 26. Defendants intentionally recorded their calls with Plaintiffs through
11 the use of an electronic device without having first obtaining Plaintiffs' consent to
12 be recorded or otherwise notifying Plaintiffs that the call was being recorded,
13 thereby violating the CIPA, Cal. Penal Code § 632.7.

14 **CLASS ALLEGATIONS**

15 27. Plaintiffs bring this action individually and on behalf of all others
16 similarly situated, as a member of two proposed classes

17 28. The class concerning the ATDS claim for no prior express consent
18 (hereafter "The ATDS Class") is defined as follows:

19 All persons within the United States who received any
20 solicitation/telemarketing telephone calls from
21 Defendants to said person's cellular telephone made
22 through the use of any automatic telephone dialing
23 system or an artificial or prerecorded voice and such
24 person had not previously consented to receiving such
25 calls within the four years prior to the filing of this
26 Complaint

26 29. Plaintiffs represent, and are members of, The ATDS Class, consisting
27 of all persons within the United States who received any solicitation/telemarketing
28 telephone calls from Defendants to said person's cellular telephone made through

1 the use of any automatic telephone dialing system or an artificial or prerecorded
2 voice and such person had not previously not provided their cellular telephone
3 number to Defendants within the four years prior to the filing of this Complaint.

4 30. The class concerning Defendant's recordings of phone calls in
5 violation of Cal. Penal Code § 632.7 ("The CIPA Class") is defined as follows:

6 All persons in California whose inbound and outbound
7 telephone conversations were recorded without their
8 consent and without notification that the calls were being
9 recorded by Defendants or its agent(s) within the one
10 year prior to the filing of this action.

11 31. The ATDS Class and The CIPA Class may be referred to collectively
12 hereinafter as "The Classes".

13 32. Defendants, its employees and agents are excluded from The Classes.
14 Plaintiff does not know the number of members in The Classes, but believes the
15 Classes' members number in the thousands, if not more. Thus, this matter should
16 be certified as a Class Action to assist in the expeditious litigation of the matter.

17 33. The Classes are so numerous that the individual joinder of all of its
18 members is impractical. While the exact number and identities of The Class
19 members are unknown to Plaintiffs at this time and can only be ascertained through
20 appropriate discovery, Plaintiffs are informed and believe and thereon allege that
21 The Classes include thousands of members. Plaintiffs allege that The Class
22 members may be ascertained by the records maintained by Defendants.

23 34. Plaintiffs and members of The ATDS Class were harmed by the acts
24 of Defendants in at least the following ways: Defendants illegally contacted
25 Plaintiffs and The ATDS Class members via their cellular telephones thereby
26 causing Plaintiff and The ATDS Class members to incur certain charges or reduced
27 telephone time for which Plaintiffs and The ATDS Class members had previously
28 paid by having to retrieve or administer messages left by Defendants during those

1 illegal calls, and invading the privacy of said Plaintiff and The ATDS Class
2 members.

3 35. Common questions of fact and law exist as to all members of The
4 ATDS Class which predominate over any questions affecting only individual
5 members of The ATDS Class. These common legal and factual questions, which
6 do not vary between ATDS Class members, and which may be determined without
7 reference to the individual circumstances of any Class members, include, but are
8 not limited to, the following:

- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendants made any telemarketing/solicitation
11 call (other than a call made for emergency purposes or made
12 with the prior express consent of the called party) to a Class
13 member using any automatic telephone dialing system or any
14 artificial or prerecorded voice to any telephone number
15 assigned to a cellular telephone service;
- 16 b. Whether Plaintiffs and The Class members were damaged
17 thereby, and the extent of damages for such violation; and
- 18 c. Whether Defendants should be enjoined from engaging in such
19 conduct in the future.

20 36. As people that received numerous telemarketing/solicitation calls
21 from Defendants using an automatic telephone dialing system or an artificial or
22 prerecorded voice, without Plaintiffs' prior express consent, Plaintiffs are asserting
23 claims that are typical of The ATDS Class.

24 37. Plaintiffs and members of The CIPA Class were harmed by the acts
25 of Defendants in at least the following ways: Defendants, either directly or through
26 its agents, illegally recorded inbound and outbound cellular telephone
27 conversations without their consent and without giving them prior notice of the
28 recording within the one year prior to the filing of this action, thereby running afoul

1 of CIPA Class members' reasonable expectations of privacy and causing them
2 damage.

3 38. Common questions of fact and law exist as to all members of The
4 CIPA Class which predominate over any questions affecting only individual
5 members of The CIPA Class. These common legal and factual questions, which
6 do not vary between CIPA Class members, and which may be determined without
7 reference to the individual circumstances of any Class members, include, but are
8 not limited to, the following:

- 9 a. Whether Defendants have a policy of recording incoming or
10 outgoing calls;
- 11 b. Whether Defendants have a policy of recording incoming or
12 outgoing calls initiated to or from a cellular telephone;
- 13 c. Whether Defendants disclose to callers or obtains their consent
14 that their incoming or outgoing telephone conversations were
15 being recorded;
- 16 d. Whether Defendants' policy of recording incoming or outgoing
17 calls to cellular telephones constitutes a violation of the CIPA,
18 Cal. Penal Code § 632.7;
- 19 e. Whether Plaintiffs and The CIPA Class were damaged thereby,
20 and the extent of damages for such violations; and
- 21 f. Whether Defendants should be enjoined from engaging in such
22 conduct in the future.

23 39. As California residents whose telephone communications from
24 Defendants were recorded without consent or notice, Plaintiffs are asserting claims
25 that are typical of The CIPA Class because every other member of The CIPA Class,
26 like Plaintiffs, was a person in California who was exposed to practically identical
27 conduct, and they are entitled to the greater of either \$5,000 in statutory damages
28 or three times the amount of actual damages for each violation.

1 40. Plaintiffs will fairly and adequately protect the interests of the
2 members of The Classes. Plaintiffs have retained attorneys experienced in the
3 prosecution of class actions.

4 41. A class action is superior to other available methods of fair and
5 efficient adjudication of this controversy, since individual litigation of the claims
6 of all Class members is impracticable. Even if every Class's member could afford
7 individual litigation, the court system could not. It would be unduly burdensome
8 to the courts in which individual litigation of numerous issues would proceed.
9 Individualized litigation would also present the potential for varying, inconsistent,
10 or contradictory judgments and would magnify the delay and expense to all parties
11 and to the court system resulting from multiple trials of the same complex factual
12 issues. By contrast, the conduct of this action as a class action presents fewer
13 management difficulties, conserves the resources of the parties and of the court
14 system, and protects the rights of each Class member.

15 42. The prosecution of separate actions by individual Class members
16 would create a risk of adjudications with respect to them that would, as a practical
17 matter, be dispositive of the interests of the other Class members not parties to such
18 adjudications or that would substantially impair or impede the ability of such non-
19 party Class members to protect their interests.

20 43. Defendants have acted or refused to act in respects generally
21 applicable to The Classes, thereby making appropriate final and injunctive relief
22 with regard to the members of the Classes as a whole.

23 **FIRST CAUSE OF ACTION**

24 **Negligent Violations of the Telephone Consumer Protection Act**

25 **47 U.S.C. §227(b).**

26 **On Behalf of The ATDS Class**

27 44. Plaintiffs repeat and incorporate by reference into this cause of action
28 the allegations set forth above at Paragraphs 1-43.

1 45. The foregoing acts and omissions of Defendants constitute numerous
2 and multiple negligent violations of the TCPA, including but not limited to each
3 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular
4 *47 U.S.C. § 227 (b)(1)(A)*.

5 46. As a result of Defendants' negligent violations of *47 U.S.C. § 227(b)*,
6 Plaintiffs and the Class Members are entitled an award of \$500.00 in statutory
7 damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

8 47. Plaintiffs and The Class members are also entitled to and seek
9 injunctive relief prohibiting such conduct in the future.

10 **SECOND CAUSE OF ACTION**

11 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

12 **Act**

13 **47 U.S.C. §227(b)**

14 **On Behalf of The ATDS Class**

15 48. Plaintiffs repeat and incorporate by reference into this cause of action
16 the allegations set forth above at Paragraphs 1-43.

17 49. The foregoing acts and omissions of Defendants constitute numerous
18 and multiple knowing and/or willful violations of the TCPA, including but not
19 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
20 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

21 50. As a result of Defendants' knowing and/or willful violations of *47*
22 *U.S.C. § 227(b)*, Plaintiffs and The Class members are entitled an award of
23 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C.*
24 *§ 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

25 51. Plaintiffs and the Class members are also entitled to and seek
26 injunctive relief prohibiting such conduct in the future.

THIRD CAUSE OF ACTION

Violation of the California Invasion of Privacy Act

Cal. Penal Code § 632.7

On Behalf of The CIPA Class

52. Plaintiffs repeat and incorporate by reference into this cause of action the allegations set forth above at Paragraphs 1-51.

53. Californians have a constitutional right to privacy. Moreover, the California Supreme Court has definitively linked the constitutionally protected right to privacy within the purpose, intent and specific protections of the Privacy Act, including specifically, Penal Code § 632. “In addition, California’s explicit constitutional privacy provision (Cal. Const., 1 § 1) was enacted in part specifically to protect California from overly intrusive business practices that were seen to pose a significant and increasing threat to personal privacy. (Citations omitted). Thus, Plaintiffs believe that California must be viewed as having a strong and continuing interest in the full and vigorous application of the provisions of section 632 prohibiting the recording of telephone conversations without the knowledge or consent of all parties to the conversation.

54. California Penal Code § 632.7 prohibits in pertinent part “[e]very person who, without the consent of all parties to a communication...intentionally records, or assists in the...intentional recordation of, a communication transmitted between...a cellular radio telephone and a landline telephone.” Thus, on its face, California Penal Code § 632.7 precludes the recording of all communications involving a cellular telephone.

55. Though similar, California Penal Code § 632 and 632.7 are not duplicative and protect separate rights. California Penal Code § 632.7 grants a wider range of protection to conversations where one participant uses a cellular phone or cordless phone. For example, the “confidential communication” requirement of California Penal Code § 632 is absent from California Penal Code

1 § 632.7.

2 56. Defendants caused to be employed certain recording equipment on the
3 telephone lines of all employees, officers, directors, and managers of Defendants.

4 57. Plaintiffs are informed and believe, and thereupon allege, that all these
5 devices were maintained and utilized to record each and every outgoing telephone
6 conversation over said telephone lines.

7 58. Said recording equipment was used to record the telephone
8 conversations of Plaintiffs and the members of the Class utilizing cellular
9 telephones, all in violation of California Penal Code § 632.7.

10 59. Based on the foregoing, Plaintiffs and the members of the Class are
11 entitled to, and below herein do pray for, their statutory remedies and damages,
12 including but not limited to, those set forth in California Penal Code § 632.7; and
13 California Penal Code § 637.2.

14 60. Because this case is brought for the purposes of enforcing important
15 rights affecting the public interest, Plaintiffs and the Class seek recovery of their
16 attorney's fees pursuant to the private attorney general doctrine codified in Code
17 of Civil Procedure § 1021.5, or any other statutory basis.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs requests judgment against Defendants for the
20 following:

21 **FIRST CAUSE OF ACTION**

22 **Negligent Violations of the Telephone Consumer Protection Act**

23 **47 U.S.C. §227(b)**

- 24 • As a result of Defendants' negligent violations of *47 U.S.C.*
25 *§227(b)(1)*, Plaintiffs and The Class members are entitled to and
26 request \$500 in statutory damages, for each and every violation,
27 pursuant to *47 U.S.C. 227(b)(3)(B)*.
28 • Any and all other relief that the Court deems just and proper.

1
2 **SECOND CAUSE OF ACTION**

3 **Knowing and/or Willful Violations of the Telephone Consumer Protection**
4 **Act**

5 **47 U.S.C. §227(b)**

- 6 • As a result of Defendants' willful and/or knowing violations of 47
7 *U.S.C. §227(b)(1)*, Plaintiffs and The Class members are entitled to
8 and request treble damages, as provided by statute, up to \$1,500, for
9 each and every violation, pursuant to 47 *U.S.C. §227(b)(3)(B)* and 47
10 *U.S.C. §227(b)(3)(C)*.
11 • Any and all other relief that the Court deems just and proper.

12 **THIRD CAUSE OF ACTION**

13 **Violation of the California Invasion of Privacy Act**

14 **Cal. Penal Code § 632.7**

- 15 • For statutory damages of \$5,000 per violation of Cal. Penal Code §
16 632.7 for Plaintiffs and each member of The CIPA Class pursuant to
17 Cal. Penal Code § 637.2(a).
18 • Injunctive relief in the form of an order prohibiting Defendants from
19 unilaterally recording telephone conversations, without first
20 informing and receiving consent from the other party to the
21 conversation.
22 • That the Court preliminarily and permanently enjoin Defendants
23 from overhearing, recording, and listening to each and every
24 oncoming and outgoing telephone conversation with California
25 resident, including Plaintiffs and The CIPA Class, without their prior
26 consent, as required by Cal. Penal Code § 630, et seq., and to maintain
27 the confidentiality of the information of Plaintiff and The CIPA
28 Class.

- 1 • For general damages according to proof.
- 2 • For costs of suit.
- 3 • For prejudgment interest at the legal rate.
- 4 • For attorney's fees and costs pursuant to Cal. Code of Civ. Pro. §
- 5 1021.5.
- 6 • For such further relief as this Court deems necessary, just, and proper.
- 7

8 **JURY DEMAND**

9 61. Pursuant to the Seventh Amendment to the Constitution of the United
10 States of America, Plaintiffs are entitled to, and demand, a trial by jury.

11
12 Respectfully Submitted this 29th Day of December, 2021.

13 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

14
15 By: /s/ Todd M. Friedman
16 Todd M. Friedman
17 Law Offices of Todd M. Friedman
18 Attorney for Plaintiff
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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [AMResorts Secretly Recorded Telemarketing Calls in California, Class Action Claims](#)
