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

TOMER DARVISH, individually and
on behalf of all others similarly
situated,

Plaintiff,

vs.

AEGIS FINANCIAL CONSULTING,
LLC,

Defendant.

Case No.

CLASS ACTION

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

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff, Tomer Darvish, brings this action against Defendant, Aegis
3 Financial Consulting, LLC, to secure redress for violations of the Telephone Consumer
4 Protection Act (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is one of the premier financial marketing organizations in the
9 country, providing annuity, life insurance, retirement and business solutions to
10 consumers. To promote its services, Defendant engages in aggressive unsolicited
11 marketing, harming thousands of consumers in the process.

12 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
13 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
14 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
15 damages on behalf of himself and members of the Class, and any other available legal
16 or equitable remedies.

17 **JURISDICTION AND VENUE**

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

21 6. The Court has personal jurisdiction over Defendant and venue is proper
22 in this District because Defendant directs, markets, and provides its business activities
23 to this District, and because Defendant’s unauthorized marketing scheme was directed
24 by Defendant to consumers in this District, including Plaintiff.

25 **PARTIES**

26 7. Plaintiff is a natural person who, at all times relevant to this action, was a
27 resident of Los Angeles County, California.

1 8. Defendant is a Colorado limited liability company whose principal office
2 is located at 410 17th Street, Suite 275, Denver, CO 80202. Defendant directs, markets,
3 and provides its business activities throughout the United States, including throughout
4 the state of California.

5 9. Unless otherwise indicated, the use of Defendant’s name in this
6 Complaint includes all agents, employees, officers, members, directors, heirs,
7 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,
8 and insurers of Defendant.

9 **THE TCPA**

10 10. The TCPA prohibits: (1) any person from calling a cellular telephone
11 number; (2) using an automatic telephone dialing system or an artificial or prerecorded
12 voice; (3) without the recipient’s prior express consent. 47 U.S.C. § 227(b)(1)(A).

13 11. The TCPA defines an “automatic telephone dialing system” (“ATDS”) as
14 “equipment that has the capacity - (A) to store or produce telephone numbers to be
15 called, using a random or sequential number generator; and (B) to dial such numbers.”
16 47 U.S.C. § 227(a)(1).

17 12. The TCPA exists to prevent communications like the ones described
18 within this Complaint. “Voluminous consumer complaints about abuses of telephone
19 technology—for example, computerized calls dispatched to private homes—prompted
20 Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

21 13. In an action under the TCPA, a plaintiff must only show that the
22 defendant “called a number assigned to a cellular telephone service using an automatic
23 dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d
24 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

25 14. The Federal Communications Commission (“FCC”) is empowered to
26 issue rules and regulations implementing the TCPA. According to the FCC’s findings,
27 calls in violation of the TCPA are prohibited because, as Congress found, automated
28

1 or prerecorded telephone calls are a greater nuisance and invasion of privacy than live
2 solicitation calls, and such calls can be costly and inconvenient. The FCC also
3 recognized that wireless customers are charged for incoming calls whether they pay in
4 advance or after the minutes are used. *Rules and Regulations Implementing the Telephone*
5 *Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd
6 14014 (2003).

7 15. In 2012, the FCC issued an order tightening the restrictions for automated
8 telemarketing calls, requiring “prior express **written** consent” for such calls to wireless
9 numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
10 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

11 16. To obtain express written consent for telemarketing calls, a defendant
12 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff a
13 “‘clear and conspicuous disclosure’ of the consequences of providing the requested
14 consent....and having received this information, agrees unambiguously to receive such
15 calls at a telephone number the [plaintiff] designates.” *In re Rules & Regulations*
16 *Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20,
17 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

18 17. The TCPA regulations promulgated by the FCC define “telemarketing”
19 as “the initiation of a telephone call or message for the purpose of encouraging the
20 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §
21 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a
22 court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas*
23 *Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

24 18. “Neither the TCPA nor its implementing regulations ‘require an explicit
25 mention of a good, product, or service’ where the implication of an improper purpose
26 is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918
27 (9th Cir. 2012)).

1 19. “‘Telemarketing’ occurs when the context of a call indicates that it was
2 initiated and transmitted to a person for the purpose of promoting property, goods, or
3 services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. §
4 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
5 *of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).

6 20. The FCC has explained that calls motivated in part by the intent to sell
7 property, goods, or services are considered telemarketing under the TCPA. *See In re*
8 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
9 14014, ¶¶ 139-142 (2003). This is true whether call recipients are encouraged to
10 purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

11 21. In other words, offers “that are part of an overall marketing campaign to
12 sell property, goods, or services constitute” telemarketing under the TCPA. *See In re*
13 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
14 14014, ¶ 136 (2003).

15 22. If a call is not deemed telemarketing, a defendant must nevertheless
16 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of*
17 *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961,
18 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising
19 calls”).

20 23. As recently held by the United States Court of Appeals for the Ninth
21 Circuit: “Unsolicited telemarketing phone calls or text messages, by their nature, invade
22 the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation
23 under the TCPA ‘need not allege any *additional* harm beyond the one Congress has
24 identified.” *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS
25 1591, at *12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549
26 (2016) (emphasis original)).

1 **FACTUAL ALLEGATIONS**

2 24. On or about February 2, 2022, and February 16, 2022, Defendant caused
3 multiple calls with prerecorded messages to be transmitted to Plaintiff’s cellular
4 telephone number ending in 8881 (the “8881 Number”):

5 25. Because Plaintiff did not answer his telephone after it rang, voicemails
6 containing prerecorded messages were left on Plaintiff’s phone.

7 26. The following are transcripts of the voicemails that were left in Plaintiff’s
8 voicemail box:

9
10 Hey how’s it going it’s Carl Muehlemeyer at Aegis Financial, hope you’re
11 having a super fnatastic day. I wanted to see if you would be interested in
12 coming to Denver March third and fourt to learn all about our radio
13 marketing platform, we’ve been putting producers just like you on the air
14 for more than twelve years now with their very own radio show. Imagine
15 for one second—four to six or more qualified prospects every single week
16 calling into your show to meet with you. That’s what our program will do
17 for you. Would that help you grow your business this year? Come learn all
18 the secrets to our program and meet current producers on the air....

19 27. The prerecorded calls at issue, which were left as voicemails, were
20 transmitted to Plaintiff’s cellular telephone, and within the time frame relevant to this
21 action.

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

1 29. Defendant's prerecorded calls constitute telemarketing because they
2 encourage the future purchase or investment in property, goods, and/or services, i.e.,
3 selling Plaintiff Defendant's products and services.

4 30. The prerecorded calls Plaintiff received originated from telephone
5 number 1(800) 579-7923, a telephone number owned and/or operated by or on behalf
6 of Defendant.

7 31. Plaintiff received the subject calls with a prerecorded voice within this
8 judicial district and, therefore, Defendant's violation of the TCPA occurred within this
9 district. Upon information and belief, Defendant caused other prerecorded messages
10 to be sent to individuals residing within this judicial district.

11 32. At no point in time did Plaintiff provide Defendant with his express
12 consent to be contacted with a prerecorded call.

13 33. Plaintiff is the subscriber and sole user of the 8881 Number and is
14 financially responsible for phone service to the 8881 Number.

15 34. Plaintiff's number ending in 8881 has been registered with the national do
16 not call registry since March 7, 2018.

17 35. Defendant's prerecorded calls were sent to a cellular telephone with a 818
18 area code, which means Defendant knew, or should have known, that it was making
19 calls into this District. The 818 area code serves the county of Los Angeles.

20 36. Defendant's prerecorded calls caused Plaintiff actual harm, including
21 invasion of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and
22 conversion. Defendant's prerecorded calls also inconvenienced Plaintiff and caused
23 disruption to his daily life.

24 37. Defendant's prerecorded calls caused Plaintiff actual harm. Specifically,
25 Plaintiff estimates that he spent approximately fifteen minutes investigating the
26 unwanted prerecorded calls including how they obtained his number and who the
27 Defendant was.

1 **CLASS ALLEGATIONS**

2 **PROPOSED CLASS**

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

5 39. Plaintiff brings this case on behalf of the Class defined as follows:

6 **No Consent Class: All persons in the United States
7 who, within four years prior to the filing of this
8 Complaint, were sent a prerecorded message, from
9 Defendant or anyone on Defendant's behalf, to said
person's cellular telephone number, without
emergency purpose and without the recipient's
prior express written consent.**

10 **Do Not Call Registry Class: All persons in the
11 United States who from four years prior to the filing
12 of this action (1) were sent a call by or on behalf of
13 Defendant; (2) more than one time within any 12-
14 month period; (3) where the person's telephone
15 number had been listed on the National Do Not
16 Call Registry for at least thirty days; (4) for the
17 purpose of selling Defendant's products and
18 services; and (5) for whom Defendant claims (a) it
19 did not obtain prior express written consent, or (b)
20 it obtained prior express written consent in the
21 same manner as Defendant claims it supposedly
22 obtained prior express written consent to call the
23 Plaintiff.**

24 40. Defendant and its employees or agents are excluded from the Class.
25 Plaintiff does not know the number of members in the Class but believes the Class
26 members number in the several thousands, if not more.

27 **NUMEROSITY**

28 41. Upon information and belief, Defendant has placed automated calls to
cellular telephone numbers belonging to thousands of consumers throughout the
United States without their prior express consent. The members of the Class, therefore,
are believed to be so numerous that joinder of all members is impracticable.

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

4 **COMMON QUESTIONS OF LAW AND FACT**

5 43. There are numerous questions of law and fact common to members of
6 the Class which predominate over any questions affecting only individual members of
7 the Class. Among the questions of law and fact common to the members of the Class
8 are:

- 9 a) Whether Defendant made non-emergency prerecorded telemarketing
10 calls to Plaintiff's and Class members' cellular telephones;
11 b) Whether Defendant can meet its burden of showing that it obtained
12 prior express written consent to make such calls;
13 c) Whether Defendant's conduct constitutes a violation of 47 C.F.R. §
14 64.1200(c);
15 d) Whether Defendant's conduct was knowing and willful;
16 e) Whether Defendant is liable for damages, and the amount of such
17 damages; and
18 f) Whether Defendant should be enjoined from such conduct in the
19 future.

20 44. The common questions in this case are capable of having common
21 answers. If Plaintiff's claim that Defendant routinely transmits prerecorded calls to
22 telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the
23 Class members will have identical claims capable of being efficiently adjudicated and
24 administered in this case.

25 **TYPICALITY**

26 45. Plaintiff's claims are typical of the claims of the Class members, as they
27 are all based on the same factual and legal theories.

1 any automatic telephone dialing system ... to any telephone number assigned to a ...
2 cellular telephone service” 47 U.S.C. § 227(b)(1)(A)(iii).

3 51. Defendant – or third parties directed by Defendant – transmitted calls
4 using an artificial or prerecorded voice to the cellular telephone numbers of Plaintiff
5 and members of the putative class.

6 52. These calls were made without regard to whether or not Defendant had
7 first obtained express permission from the called party to make such calls. In fact,
8 Defendant did not have prior express consent to call the cell phones of Plaintiff and
9 the other members of the putative Class when its calls were made.

10 53. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by
11 using an artificial or prerecorded voice to make non-emergency telephone calls to the
12 cell phones of Plaintiff and the other members of the putative Class without their prior
13 express consent.

14 54. Defendant knew that it did not have prior express consent to make these
15 calls, and knew or should have known that it was using equipment that at constituted
16 an automatic telephone dialing system. The violations were therefore willful or
17 knowing.

18 55. As a result of Defendant’s conduct and pursuant to § 227(b)(3) of the
19 TCPA, Plaintiff and the other members of the putative Class were harmed and are each
20 entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the
21 members of the Class are also entitled to an injunction against future calls. *Id.*

22 **COUNT II**
23 **Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)**
24 **(On Behalf of Plaintiff and the Class)**

25 56. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set
26 forth herein.

27 57. At all times relevant, Defendant knew or should have known that its
28 conduct as alleged herein violated the TCPA.

1 58. Defendant knew that it did not have prior express consent to make these
2 calls, and knew or should have known that its conduct was a violation of the TCPA.

3 59. Because Defendant knew or should have known that Plaintiff and Class
4 Members had not given prior express consent to receive its autodialed calls, the Court
5 should treble the amount of statutory damages available to Plaintiff and the other
6 members of the putative Class pursuant to § 227(b)(3) of the TCPA.

7 60. As a result of Defendant’s violations, Plaintiff and the Class Members are
8 entitled to an award of \$1,500.00 in statutory damages, for each and every violation,
9 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

10
11 **COUNT III**
12 **Violation of the TCPA, 47 U.S.C. § 227**
13 **(On Behalf of Plaintiff and the Do Not Call Registry Class)**

14 61. Plaintiff repeats and realleges the paragraphs 1 through 48 of this
15 Complaint and incorporates them by reference herein.

16 62. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides
17 that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential
18 telephone subscriber who has registered his or her telephone number on the national
19 do-not-call registry of persons who do not wish to receive telephone solicitations that
20 is maintained by the federal government.”

21 63. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable
22 to any person or entity making telephone solicitations or telemarketing calls to wireless
23 telephone numbers.”¹

24 64. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall
25 initiate any call for telemarketing purposes to a residential telephone subscriber unless

26 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278,
27 Report and Order, 18 FCC Rcd 14014 (2003) Available at
28 https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

1 such person or entity has instituted procedures for maintaining a list of persons who
2 request not to receive telemarketing calls made by or on behalf of that person or entity.”

3 65. Any “person who has received more than one telephone call within any
4 12-month period by or on behalf of the same entity in violation of the regulations
5 prescribed under this subsection may” may bring a private action based on a violation
6 of said regulations, which were promulgated to protect telephone subscribers’ privacy
7 rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

8 66. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be
9 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do
10 Not Call Registry Class members who registered their respective telephone numbers on
11 the National Do Not Call Registry, a listing of persons who do not wish to receive
12 telephone solicitations that is maintained by the federal government.

13 67. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not
14 Call Registry Class received more than one telephone call in a 12-month period made
15 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.
16 As a result of Defendant’s conduct as alleged herein, Plaintiff and the Do Not Call
17 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are
18 entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. §
19 64.1200.

20 68. To the extent Defendant’s misconduct is determined to be willful and
21 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
22 statutory damages recoverable by the members of the Do Not Call Registry Class.

23 **PRAYER FOR RELIEF**

24 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the
25 following relief:
26
27

1 a. A declaration that Defendant's practices described herein violate the
2 Telephone Consumer Protection Act, 47 U.S.C. § 227;

3 b. An injunction prohibiting Defendant from using an artificial or prerecorded
4 voice to contact telephone numbers assigned to cellular telephones without the prior
5 express permission of the called party;

6 c. An award of actual and statutory damages; and

7 d. Such further and other relief the Court deems reasonable and just.

8 **JURY DEMAND**

9 Plaintiff hereby demand a trial by jury.

10
11 Dated: April 04, 2022

Respectfully submitted,

12
13 By /s/ Scott Edelsberg

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