

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

MARK HOFFMAN, on behalf of himself and all  
others similarly situated,

Plaintiff,

vs.

HEARING HELP EXPRESS, INC.,

Defendant.

NO.

**COMPLAINT—CLASS ACTION**

**DEMAND FOR JURY TRIAL**

Mark Hoffman, individually and on behalf of others similarly situated, alleges the following against Defendant Hearing Help Express, Inc.

**I. NATURE OF ACTION**

1. In August and September 2019, Mark Hoffman received telemarketing calls on his cellular phone placed by or on behalf of Hearing Help Express, Inc. seeking to sell their hearing aid products to him. Hearing Help Express, Inc. used an automatic telephone dialing system (“ATDS”) on at least one of these calls.

2. Mark Hoffman has not been a Hearing Help Express, Inc. customer at any time, and Mark Hoffman did not consent to receive calls from Hearing Help Express, Inc. or its agents. Mark Hoffman’s telephone number is listed on the Do Not Call registry maintained by the Federal Trade Commission and has been continuously listed there since August 21, 2009.

1           3.       Plaintiff brings this class action for damages and other equitable and legal  
2 remedies resulting from Defendant’s violation of the Telephone Consumer Protection Act, 47  
3 U.S.C. § 227, *et seq.* (“TCPA”).

4   **II. JURISDICTION AND VENUE**

5           4.       This Court has original jurisdiction over Plaintiff’s TCPA claims pursuant to 28  
6 U.S.C. § 1331, because they present a federal question.

7           5.       This Court has personal jurisdiction over Hearing Help Express, Inc. because it  
8 made the calls that are the subject of this action to Plaintiff’s cellular phone. Plaintiff’s cellular  
9 phone uses a Washington area code and was, at all relevant times, located in Washington.

10          6.       Venue is proper in this District under 28 U.S.C. § 1391(b) because a substantial  
11 part of the events and omissions giving rise to Plaintiff’s claims occurred in this District.

12   **III. PARTIES**

13          7.       Plaintiff Mark Hoffman resides in Kitsap County, Washington.

14          8.       Defendant Hearing Help Express, Inc. is an Illinois corporation with  
15 headquarters in Dekalb, Illinois.

16   **IV. FACTUAL ALLEGATIONS**

17       **A.    Defendant made non-emergency calls to the cellular phones of Plaintiff and other**  
18       **consumers without their prior express written consent.**

19          9.       Plaintiff’s telephone number, (XXX) XXX-9916, is assigned to a cellular  
20 telephone service.

21          10.       Plaintiff has not been a Hearing Help Express, Inc. customer or subscriber at any  
22 time and never consented to receive calls from Hearing Help Express, Inc.

23          11.       On August 27, 2019, Hearing Help Express, Inc. called Plaintiff’s cellular phone  
24 from the telephone number (630) 403-8617.

25          12.       On August 29, 2019, Hearing Help Express, Inc. again called Plaintiff’s cellular  
26 phone from the telephone number (630) 403-8617.

27

1           13.     On September 4, 2019, Hearing Help Express, Inc. again called Plaintiff's  
2 cellular phone, this time from the telephone number (847) 748-0828.

3           14.     The September 4, 2019 call that the Plaintiff received from Hearing Help  
4 Express, Inc. began with a pause.

5           15.     During the calls that Plaintiff answered, an individual from Hearing Help  
6 Express, Inc. promoted its hearing aid services and offered to sell them to the Plaintiff.

7           16.     Plaintiff was not interested and had not requested information regarding those  
8 products.

9     **B.     Defendant Used an ATDS or an Artificial or Pre-recorded Voice.**

10          17.     During the September 4, 2019 call, Hearing Help Express, Inc. called Plaintiff's  
11 cellular phone using an ATDS. Plaintiff noted a pause before being connected to the call, which  
12 is characteristic of a call placed by an ATDS.

13          18.     Hearing Help Express, Inc. is a division of IntriCon, with operations in the  
14 United States, Asia and Europe. The scale of Hearing Help Express, Inc.'s business requires  
15 that it and its agents use a sophisticated dialing system capable of storing phone numbers and  
16 dialing them automatically, as well as delivering messages without requiring the involvement  
17 of human agents.

18          19.     The equipment used to call Plaintiff and others not only had the capacity to store  
19 or produce telephone numbers to be called using a random or sequential number generator, but  
20 was programmed to sequentially or randomly access stored telephone numbers to automatically  
21 call such numbers for the calls that are the subject of this case. The equipment generated, and  
22 then stored, a sequence of telephone numbers for calling, and then automatically called those  
23 numbers. The calls were part of a campaign that made numerous phone calls in a short period  
24 of time without human intervention.

1           20.     In August of 2019, a former employee left the following review of working at  
2 Hearing Health Express, Inc. on the website GlassDoor, entitled “Boiler room telemarketing for  
3 hearing aid sales”:

4           The outbound sales operation is run like a boiler room. Cheap leads are loaded into  
5 a dialer....About 98% did not ask for information on hearing aids, so you spend  
6 most of your day wasting your time talking to people who don’t even have hearing  
loss.

7     See <https://www.glassdoor.com/Reviews/Hearing-Help-Express-Reviews-E2608089.htm> (Last  
8 Visited September 24, 2019).

9     **C.     Defendant’s TCPA violations injured Plaintiff.**

10           21.     During the relevant period, Plaintiff has carried his cellular phone with him at  
11 most times so that he can be available to family and friends.

12           22.     Defendant’s calls invaded Plaintiff’s privacy and intruded upon his right to  
13 seclusion. The calls frustrated and upset Plaintiff by interrupting his daily life and wasting his  
14 time.

15           23.     Defendant’s calls intruded upon and occupied the capacity of Plaintiff’s cellular  
16 phone and depleted the battery of Plaintiff’s cellular phone. The calls temporarily seized and  
17 trespassed upon Plaintiff’s use of his cellular phone, and caused him to divert attention away  
18 from other activities to address the calls.

19   **V. CLASS ACTION ALLEGATIONS**

20           24.     Plaintiff brings this lawsuit under Federal Rules of Civil Procedure Rules 23(a),  
21 (b)(2), and (b)(3) as a representative of the following class:

22   All persons or entities within the United States who received, on  
23 or after October 9, 2015, a non-emergency telephone call from or  
24 on behalf of Hearing Help Express, Inc., promoting goods or  
services:

25   (i) to a cellular telephone number through the use of an automatic  
26 telephone dialing system or an artificial or prerecorded voice; or  
27

1 (ii) to a cellular or residential telephone number that has been  
2 registered on the national Do Not Call Registry for at least 31 days  
3 and who received more than one such call within any twelve-  
4 month period.

5 Plaintiff reserves the right to amend the class definition following an appropriate period of  
6 discovery.

7 25. Excluded from the Class are Defendant, its employees, agents and assigns, and  
8 any members of the judiciary to whom this case is assigned, their respective court staff, and  
9 Plaintiff's counsel.

10 26. Because auto-dialing equipment maintains records of each contact, members of  
11 the above-defined Class can be identified through Defendant's or its agents' records.

#### 12 **Numerosity**

13 27. At the time of filing, Plaintiff does not know the exact number of Class  
14 Members. But the breadth of Hearing Help Express, Inc. operations indicates that Class  
15 Members likely number in the hundreds or thousands, and are geographically disbursed  
16 throughout the country.

17 28. The alleged size and geographic dispersal of the Class makes joinder of all Class  
18 Members impracticable.

#### 19 **Commonality and Predominance**

20 29. Common questions of law and fact exist with regard to each of the claims and  
21 predominate over questions affecting only individual Class members. Questions common to the  
22 Class include:

23 a. Whether Defendant's dialing system(s) constitute an ATDS under the  
24 TCPA;

25 b. Whether Defendant used an ATDS to place non-emergency calls to the  
26 cellular telephones of Plaintiff and Class members without their prior express consent;  
27

- 1 c. Whether Defendant placed calls to numbers on the National Do Not Call
- 2 Registry;
- 3 d. Whether Defendant’s telephone calls were made knowingly or willfully;
- 4 e. Whether Plaintiff and Class members were injured by receiving such
- 5 calls; and
- 6 f. Whether Defendant should be enjoined from engaging in such conduct in
- 7 the future.

**Typicality**

8  
9 30. Plaintiff’s claims are typical of the claims of the Class, in that Plaintiff, like all  
10 Class Members, has been injured by Defendant’s uniform misconduct—the placement of calls  
11 to telephones for non-emergency purposes without the prior written express consent of the  
12 called parties.

**Adequacy of Representation**

13  
14 31. Plaintiff will fairly and adequately protect the interests of the Class and is  
15 committed to the vigorous prosecution of this action. Plaintiff has retained counsel experienced  
16 in class action litigation and matters involving TCPA violations.

**Superiority**

17  
18 32. A class action is superior to other available methods for the fair and efficient  
19 adjudication of this controversy. Because the amount of each individual Class member’s claim  
20 is small relative to the complexity of the litigation, and because of Defendant’s financial  
21 resources, Class members are unlikely to pursue legal redress individually for the violations  
22 detailed in this complaint. Class-wide damages are essential to induce Defendant to comply  
23 with federal law. Individualized litigation would significantly increase the delay and expense to  
24 all parties and to the Court and would create the potential for inconsistent and contradictory  
25 rulings. By contrast, a class action presents fewer management difficulties, allows claims to be  
26 heard which would otherwise go unheard because of the expense of bringing individual  
27

1 lawsuits, and provides the benefits of adjudication, economies of scale, and comprehensive  
2 supervision by a single court.

3 **VI. FIRST CLAIM FOR RELIEF**

4 **Violation of § 227(b)(1) for calls made using**  
5 **an ATDS or artificial/prerecorded voice**

6 33. Defendant violated 47 U.S.C. § 227(b)(1) by placing non-emergency calls,  
7 either directly or through the actions of others, using an automatic telephone dialing system or  
8 an artificial or prerecorded voice to cellular telephone numbers without the prior express  
9 written consent of the called party.

10 **VII. SECOND CLAIM FOR RELIEF**

11 **Violation of § 227(c) for calls placed to numbers**  
12 **listed on the Do Not Call Registry**

13 34. Defendant violated 47 U.S.C. § 227(c) by placing, either directly or through the  
14 actions of others, more than one telephone solicitation call within a 12-month period to  
15 telephone numbers that have been listed on the national Do Not Call Registry for at least 31  
16 days.

17 **VIII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of the Class defined above,  
19 respectfully requests that this Court:

20 A. Determine that the claims alleged herein may be maintained as a class action  
21 under Federal Rule of Civil Procedure 23, and issue an order certifying the Class defined above  
22 and appointing Plaintiff as the Class representative;

23 B. Award \$500 in statutory damages for each and every call that Hearing Help  
24 Express, Inc. negligently placed in violation of 47 U.S.C. § 227(b)(1) of the TCPA;

25 C. Award \$1,500 in statutory damages for each and every call that Hearing Help  
26 Express, Inc. willfully or knowingly placed in violation of 47 U.S.C. § 227(c)(5) of the TCPA;

1 D. Grant appropriate injunctive and declaratory relief, including, without limitation,  
2 an order requiring Defendant to implement measures to stop future violations of the TCPA; and

3 E. Grant such further relief as the Court deems proper.

4 **IX. DEMAND FOR JURY TRIAL**

5 Plaintiff hereby demands a trial by jury.

6 RESPECTFULLY SUBMITTED AND DATED this 9th day of October, 2019.

7 TERRELL MARSHALL LAW GROUP PLLC

8 By: /s/ Beth E. Terrell, WSBA #26759  
9 Beth E. Terrell, WSBA #26759  
10 Email: bterrell@terrellmarshall.com

11 By: /s/ Jennifer Rust Murray, WSBA #36983  
12 Jennifer Rust Murray, WSBA #36983  
13 Email: jmurray@terrellmarshall.com

14 By: /s/ Adrienne D. McEntee, WSBA #34061  
15 Adrienne D. McEntee, WSBA #34061  
16 Email: amcentee@terrellmarshall.com  
17 936 North 34th Street, Suite 300  
18 Seattle, Washington 98103-8869  
19 Telephone: (206) 816-6603

20 Anthony I. Paronich  
21 Email: anthony@paronichlaw.com  
22 PARONICH LAW, P.C.  
23 350 Lincoln Street, Suite 2400  
24 Hingham, Massachusetts 02043  
25 Telephone: (617) 485-0018  
26 Facsimile: (508) 318-8100

27 *Attorneys for Plaintiff and the Proposed Class*



CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MARK HOFFMAN

(b) County of Residence of First Listed Plaintiff Kitsap (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Beth E. Terrell, WSBA #26759, Terrell Marshall Law Group PLLC, 936 North 34th Street, Suite 300, Seattle, Washington, 98104; telephone (206) 816-6603; email: bterrell@terrellmarshall.com

DEFENDANTS

HEARING HELP EXPRESS, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S.C. 47 § 227, et seq.

Brief description of cause: Violations of Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 10/09/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Beth E. Terrell, WSBA #26759

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Washington

MARK HOFFMAN, on behalf of himself and all others
similarly situated,

Plaintiff(s)

v.

HEARING HELP EXPRESS, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Hearing Help Express, Inc.
c/o Illinois Corporation Service Company, Registered Agent
801 Adlai Stevenson Drive
Springfield, Illinois 62703

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Beth E. Terrell, WSBA #26759
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869
Telephone: (206) 816-6603

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Hearing Help Express Placed Illicit Telemarketing Calls, According to Class Action](#)

---