

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

GLENN SILBAUGH, Individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AGR GROUP, LLC

Defendant.

CASE NO.

JUDGE

COMPLAINT FOR CLASS ACTION

Now comes Glenn Silbaugh, individually and as representative of all others similarly situated, and for his Class Action Complaint states:

INTRODUCTION

1. This is a class action brought by Glenn Silbaugh, individually and as a putative representative, against AGR Group, LLC (“AGR” or “Defendant”) Defendant has violated federal law by using automatic telephone dialing systems to place unsolicited calls to the telephones of consumers nationwide without the consent of the telephone’s owner. Under the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq., (“TCPA”) Plaintiff seeks to stop Defendant from placing the unsolicited calls and to obtain redress for all persons injured by this conduct. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, based on the investigation conducted by his attorneys.

PARTIES

2. Plaintiff Glenn Silbaugh (hereinafter, “Plaintiff”) is an individual and resident of the State of Ohio, County of Lake, and City of Painesville.

3. Defendant AGR Group, LLC is a Florida Limited Liability Company with its principal place of business located at 9701 International Court North, Suite #A, St. Petersburg, FL 33716.

JURISDICTION AND VENUE

4. The Court has original jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the laws of the United States, specifically the Telephone Consumer Protection Act, 47 U.S.C. § 227.

5. Because a substantial portion of the events giving rise to the present claim occurred in this District, venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(2).

6. Venue is also proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events at issue occurred in this district.

FACTUAL ALLEGATIONS

7. AGR is a “sales and service company dedicated exclusively to the retail energy industry” that has “built a reputation among retail energy suppliers as the most trusted partner for outbound telemarketing ...and lead generation services.”¹

8. In an attempt to market and sell the products and services of various third-party energy suppliers, Defendant repeatedly made automated promotional telephone calls to Plaintiff and the other members of the putative Class’s telephones, in violation of the TCPA.

¹ <http://www.agrgroupinc.com/about-us/> (Last visited September 6, 2017)

9. Plaintiff alleges that Defendant made auto-dialed telephone calls using equipment covered by the TCPA, and did so to promote its services and that of its customers, without Plaintiff's prior express written consent.

10. By making these unauthorized telephone calls, AGR has violated Plaintiff's and other individuals' statutory and privacy rights. AGR has also caused actual concrete harm, not only because individuals were subjected to the aggravation, time, and invasion of privacy that necessarily accompanies unwanted phone calls, but also because individuals frequently pay their cell phone service providers for the receipt of such unwanted telephone calls, have lost use of their cell phone and cell phone line when receiving such calls, are subjected to increased electricity costs to charge their phones after receiving such calls, and waste their time answering or otherwise acknowledging such calls

11. To redress these injuries, Plaintiff, on behalf of himself and a nationwide class, brings this class action under TCPA.

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

13. When it passed the TCPA, Congress intended to provide consumers a choice as to how telemarketers may contact them and found that "[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer." Pub. L. No.102-243, § 11.

14. Congress also found that "the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance..." *Id.* at §§12-13.

15. On behalf of himself and the Class, Plaintiff seeks an injunction requiring Defendant to cease all unsolicited telephone calling activities and an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

THE CALL TO PLAINTIFF GLENN SILBAUGH

16. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

17. On June 2, 2017 AGR placed a telemarketing call to the Plaintiff's cellular telephone.

18. The call from AGR came from (440) 638-5692.

19. When answering the call, Plaintiff heard a pause followed immediately by a "click" noise. This unmistakably was NOT a human being manually dialing a phone number and executing a call, but a machine automatically calling people and then automatically connecting that call to a human in AGR's call center only after a recipient, such as the Plaintiff, answered the call.

20. Plaintiff has never given express consent to receive a telephone call from Defendant.

21. Plaintiff does not have a relationship with Defendant, has never provided his telephone number to Defendant, nor consented or requested that the Defendant call him or offer him products or services.

22. AGR was calling on behalf of a third-party energy provider for a commercial purpose in an attempt to solicit Plaintiff's business.

CLASS ALLEGATIONS

23. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

24. Defendant and its agents have made, and continue to make, unsolicited calls to cellular telephone numbers, including to Plaintiff's and the other members of the class, using an automatic telephone dialing system.

25. These calls were made without the prior express consent of Plaintiff or the class members.

26. Plaintiff brings this action on behalf of himself and for all other persons similarly situated (herein collectively referred to as "Plaintiffs" or "putative class members") who received calls on their cellular telephones from Defendant's automatic telephone dialing system without giving Defendant prior express consent.

27. This class numbers over forty (40) persons and is so numerous that joinder of all members is impracticable, and it is further impracticable to bring all such persons before this Court.

28. The injuries and damages to these class members present questions of law and fact that are common to each class member, and that are common to the entire class as a whole.

Those common questions include, and are not limited to:

- (a) Whether the subject calls were auto-dialed;
- (b) Whether the subject calls are covered by the TCPA;
- (c) Whether the subject calls violate the TCPA; and
- (d) Whether the class members are entitled to relief under the TCPA.

29. Defendant has have engaged in the same conduct regarding all of the other members of the class asserted in this suit.

30. The claims, defenses, and injuries of the representative Plaintiff are typical of the claims, defenses and injuries of the entire class, and the claims, defenses and injuries of each class member are typical of those of the entire class.

31. Representative Plaintiff will fully and adequately protect and represent the entire class, and all of its putative class members.

32. The identity of all members of this class cannot be determined at this time, but will be so determined at a later time upon obtaining discovery from Defendant and others.

33. The prosecution of separate actions by each member of this class would create a substantial risk of inconsistent or varying adjudications with regard to individual members of the class that would establish incompatible standards of conduct for Defendant.

34. The prosecution of separate actions would also create a substantial risk of adjudication with respect to individual members of the class which, as a practical matter, would be dispositive of the interest of other members not parties to the adjudication, thereby substantially impairing and impeding their ability to protect these interests. Further, the maintenance of this suit as a class action is the superior means of disposing of the common questions which predominate herein.

FIRST CLAIM FOR RELIEF

Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.

35. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

36. Plaintiff did not expressly consent to receive calls from Defendant, as required by the TCPA.

37. Defendant used a computerized automatic telephone dialing system to call Plaintiff's cellular telephone.

38. The call to Plaintiff's cellular telephone was a violation of 47 U.S.C. 227(b)(1)(A)(iii).

39. Defendant placed this call in knowing violation of the TCPA. It willfully violated federal law.

40. Defendant has acted in the same way toward all members of the class.

41. Plaintiff and the class members were harmed by Defendant's conduct. This included the harm envisioned by the TCPA in being a recipient of an unlawful robo-call for which the TCPA provides specific relief. This also included the harms and actual damages identified in paragraph 10 above, which is incorporated here.

42. As a result of these calls, Plaintiff and the class are entitled to relief, recovery, and damages under the TCPA.

SECOND CLAIM FOR RELIEF
Injunction and Request for Restraining Order

43. Plaintiff realleges and incorporates herein all previous paragraphs of this Complaint.

44. Unless restrained and enjoined, Defendant will not cease and desist the conduct described above, and continues that conduct unabated.

45. Plaintiff and the class have no adequate remedy at law to prevent Defendant from continuing this conduct in violation of law.

46. The TCPA provides for injunctive relief against continuing violations, stating:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State — A) an action based on a

violation of this subsection or the regulations prescribed under this subsection to enjoin such violation...47 USCS § 227(b)(3).

PRAYER FOR RELIEF

WHEREFORE Plaintiff demands judgment as follows:

1. For an Order determining at the earliest possible time that this matter may proceed as a class action under Civil Rule 23 and certifying this case as such;
2. For a preliminary and thereafter permanent injunction preventing Defendant from continuing its conduct described above;
3. For damages of actual monetary loss, or \$500 for each violation, whichever is greater, pursuant to 47 U.S.C. § 227(b)(3);
4. For treble damages pursuant to 47 U.S.C. § 227(b)(3);
5. For reasonable costs and attorney fees necessarily incurred herein; and
6. For such other or further relief to which Plaintiff and the class are entitled.

Respectfully submitted,

/s/Patrick J. Perotti

Patrick J. Perotti, Esq. (#0005481)

Nicole T. Fiorelli, Esq. (#FILL IN)

Frank A. Bartela, Esq. (#0088128)

DWORKEN & BERNSTEIN CO., L.P.A.

60 South Park Place

Painesville, Ohio 44077

(440) 352-3391 (440) 352-3469 Fax

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nfiorelli@dworkenlaw.com

fbartela@dworkenlaw.com

JS 44 (Rev. 06/17)

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

GLENN SILBAUGH, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Patrick J. Perotti, Esq. / Dworken & Bernstein, LPA
60 S. Park Place, Painesville, 44077
440-352-3391

DEFENDANTS

AGR GROUP, LLC

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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

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

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY - Product Liability <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State 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):
47 USC 227

Brief description of cause:
Violation of Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMANDS** CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE _____ SIGNATURE OF ATTORNEY OF RECORD _____

09/22/2017

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is RELATED to another PENDING civil case. This action is REFILED pursuant to LR 3.1.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: LAKE

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON
- CLEVELAND
- YOUNGSTOWN

(Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
(Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
(Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO

(Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Ohio



Glenn Silbaugh, individually and on behalf of all others similarly situated

Plaintiff

v.

AGR Group, LLC

Defendant

)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

AGR Group, LLC
C/O Jono Lobue
9701 International Court North
Suite #A
St. Petersburg, FL 33716

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:

Patrick Perotti, Esq.
Nicole Fiorelli, Esq.
Frank Bartella, Esq.
Dworken & Bernstein, LPA
60 S. Park Place
Painesville, OH 44077

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.

SANDY OPACICH, 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: [AGR Group 'Robocalled' Consumers Without Consent, Class Action Claims](#)
