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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LYLE STANDISH, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

PRO-LAB, INC.,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Lyle Standish (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges the following on information and belief, except that Plaintiff’s allegations as to his
3 own actions are based on personal knowledge:

4 **NATURE OF THE ACTION**

5 1. Defendant PRO-LAB, Inc. (“Defendant”) called Mr. Standish’s cellular telephone at
6 least once using an automatic telephone dialing system, including a call on July 19, 2018 from
7 telephone number (954) 384-4446.

8 2. Defendant placed these calls with a predictive dialer with the capacity to store and
9 dial a list of telephone numbers without human intervention.

10 3. Plaintiff did not give Defendant prior express written consent to make these calls.

11 4. Plaintiff asked Defendant to stop calling him, but Defendant persisted in harassing
12 Plaintiff with repeated unlawful calls.

13 5. Plaintiff brings this action for injunctive relief and statutory damages arising out of
14 and relating to the conduct of Defendant in negligently, knowingly, and willfully contacting
15 Plaintiff and class members on their telephones using an Automatic Telephone Dialing System
16 without their prior express written consent within the meaning of the Telephone Consumer
17 Protection Act, 47 U.S.C. § 227 *et seq.* (the “TCPA”).

18 **PARTIES**

19 6. Plaintiff Lyle Standish is, and at all times mentioned herein was, a resident of North
20 Highlands, California, and a citizen of the State of California.

21 7. Defendant PRO-LAB, Inc. is, upon information and belief, a Florida Corporation
22 with a principle place of business at 1675 N. Commerce Pkwy., Weston, FL 33326.

23 **JURISDICTION AND VENUE**

24 8. This Court has subject matter jurisdiction over this action pursuant to the Class
25 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*, amends 28
26 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as
27 here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed
28

1 class have a different citizenship from Defendant; and (c) the claims of the proposed class
2 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C.
3 § 1332(d)(2) and (6).

4 9. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331
5 because this action involves violations of a federal statute, the TCPA.

6 10. Venue is proper in this Court under 28 U.S.C. § 1391 because Plaintiff resides in
7 this District and a substantial part of the events giving rise to Plaintiff’s claims took place within
8 this District.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 **A. The Telephone Consumer Protection Act (“TCPA”) Of 1991**

11 11. In 1991, Congress enacted the TCPA in response to a growing number of consumer
12 complaints regarding certain telemarketing practices.

13 12. The TCPA regulates, among other things, the use of automated telephone
14 equipment, or “autodialers,” defined as equipment which “has the capacity . . . (a) to store or
15 produce telephone numbers to be called, using a random or sequential number generator; and (b) to
16 dial such numbers.” 47 U.S.C. § 227(a)(1). Specifically, the plain language of section
17 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the
18 absence of an emergency or the prior express consent of the called party.

19 13. The FCC has issued rulings clarifying that in order to obtain an individual’s consent,
20 a clear, unambiguous, and conspicuous written disclosure must be provided by the individual.
21 2012 FCC Order, 27 FCC Rcd. at 1839 (“[R]equiring prior written consent will better protect
22 consumer privacy because such consent requires conspicuous action by the consumer—providing
23 permission in writing—to authorize autodialed or prerecorded telemarketing calls. . .”).

24 **B. Defendant’s Calls to Plaintiff and Class Members**

25 14. Defendant has repeatedly called Plaintiff’s cellular telephone to advertise its
26 products or services using an automatic telephone dialing system, including a call on July 19, 2018
27 from telephone number (954) 384-4446.

1 15. Plaintiff asked Defendant to stop calling, but Defendant persisted.

2 16. Plaintiff has never consented in writing, or otherwise, to receive autodialed calls
3 from Defendant to his cellphone.

4 17. Defendant called Plaintiff at least once using an autodialer without his prior express
5 written consent.

6 18. Specifically, the hardware and software used by Defendant placed the calls at issue
7 with a predictive dialer with the present capacity to function as an autodialer by generating random
8 or sequential telephone numbers and dialing those numbers, *en masse*, in an automated fashion
9 without human intervention.

10 19. Defendant's automated dialing equipment also is, or includes features substantially
11 similar to, a predictive dialer, meaning that it is capable of making numerous phone calls
12 simultaneously and automatically connecting answered calls to then available callers and
13 disconnecting the rest (all without human intervention).

14 20. When Plaintiff answered Defendant's call, he heard a momentary pause. This pause
15 is a hallmark of a predictive dialer. According to experts on telecommunications equipment,
16 predictive dialers have the inherent present capacity to both (1) store and dial a list of telephone
17 numbers without human intervention, and (2) generate random or sequential telephone numbers
18 and to then dial those numbers.

19 21. Plaintiff asked Defendant that he not be called anymore, but Defendant kept calling.

20 **CLASS ACTION ALLEGATIONS**

21 22. Plaintiff brings this action on behalf of himself and on behalf of all other persons
22 similarly situated.

23 23. Plaintiff proposes the following Class definition:

24 All persons within the United States who (a) received a non-
25 emergency telephone call; (b) on his or her cellular telephone; (c)
26 made by or on behalf of Defendant in order to promote its products or
27 services; (d) for whom Defendant had no record of prior express
28 written consent; (e) and such phone call was made with the use of an
automatic telephone dialing system as defined under the TCPA and/or
with an artificial or prerecorded voice; (f) at any time in the period

1 that begins four years before the filing of the complaint in this action
2 to the date that class notice is disseminated.

3 24. Plaintiff represents, and is a member of, this proposed class. Excluded from the
4 Class is Defendant and any entities in which Defendant has a controlling interest, Defendant's
5 agents and employees, any Judge and/or Magistrate Judge to whom this action is assigned and any
6 member of such Judges' staffs and immediate families.

7 25. Plaintiff does not know the exact number of members in the proposed Class, but
8 reasonably believes, based on the scale of Defendant's business, that the class is so numerous that
9 individual joinder would be impracticable.

10 26. Plaintiff and all members of the proposed Class have been harmed by the acts of
11 Defendant in the form of multiple involuntary telephone and electrical charges, the aggravation,
12 nuisance, and invasion of privacy that necessarily accompanies the receipt of unsolicited and
13 harassing telephone calls, and violations of their statutory rights.

14 27. The disposition of the claims in a class action will provide substantial benefit to the
15 parties and the Court in avoiding a multiplicity of identical suits. The proposed class can be
16 identified easily through records maintained by Defendant.

17 28. There are well defined, nearly identical, questions of law and fact affecting all
18 parties. The questions of law and fact involving the class claims predominate over questions which
19 may affect individual members of the proposed class. Those common question of law and fact
20 include, but are not limited to, the following:

- 21 a. Whether Defendant made telephone calls to Plaintiff and class members using a
22 predictive dialer with the present capacity to function as an autodialer by generating
23 random or sequential telephone numbers and dialing those numbers without human
24 intervention;
- 25 b. Whether Defendant made telephone calls to class members despite previous
26 removal requests;
- 27 c. Whether Defendant's conduct was knowing and/or willful;
- 28

- d. Whether Defendant is liable for damages, and the amount of such damages, and
- e. Whether Defendant should be enjoined from engaging in such conduct in the future.

29. Plaintiff asserts claims that are typical of each member of the class because he is a person who received at least one call on his cellular telephone using an autodialer without his prior express written consent. Plaintiff will fairly and adequately represent and protect the interests of the proposed class, and has no interests which are antagonistic to any member of the proposed class.

30. Plaintiff has retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes.

31. A class action is the superior method for the fair and efficient adjudication of this controversy. Class wide relief is essential to compel Defendant to comply with the TCPA. The interest of the members of the proposed class in individually controlling the prosecution of separate claims against Defendant is small because the statutory damages in an individual action for violation of the TCPA are relatively small. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the calls at issue are all automated and the members of the class, by definition, did not provide the prior express consent required under the statute to authorize calls to their telephones.

32. Defendant has acted on grounds generally applicable to the proposed class, thereby making final injunctive relief and corresponding declaratory relief with respect to the proposed class as a whole appropriate. Moreover, on information and belief, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

CAUSES OF ACTION

FIRST COUNT

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, et seq.

33. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if

1 fully stated herein.

2 34. The foregoing acts and omissions of Defendant constitute numerous and multiple
3 knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited
4 provisions of 47 U.S.C. § 227 *et seq.*

5 35. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et*
6 *seq.*, Plaintiff and members of the proposed class are entitled to treble damages of up to \$1,500.00
7 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(C).

8 36. Plaintiff and members of the proposed class are also entitled to and do seek
9 injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

10 37. Plaintiff and members of the proposed class are also entitled to an award of
11 attorneys' fees and costs.

12 **SECOND COUNT**

13 **VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT,**
14 **47 U.S.C. § 227, et seq.**

15 38. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if
16 fully stated herein.

17 39. The foregoing acts and omissions of Defendant constitute numerous and multiple
18 violations of the TCPA, including but not limited to each of the above-cited provisions of 47
19 U.S.C. § 227 *et seq.*

20 40. As a result of Defendant's violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and
21 members of the proposed class are entitled to an award of \$500.00 in statutory damages for each
22 and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

23 41. Plaintiff and members of the proposed class are also entitled to, and do, seek
24 injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

25 42. Plaintiff and members of the proposed class are also entitled to an award of
26 attorneys' fees and costs.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiff and all members

1 of the proposed class the following relief against Defendant:

- 2 a. Injunctive relief prohibiting such violations of the TCPA by Defendant in the future;
- 3 b. As a result of Defendant's willful and/or knowing violations of the TCPA, Plaintiff
- 4 seeks for himself and each member of the proposed Class treble damages, as
- 5 provided by statute, of up to \$1,500.00 for each and every call that violated the
- 6 TCPA;
- 7 c. As a result of Defendant's violations of the TCPA, Plaintiff seeks for himself and
- 8 each member of the proposed Class \$500.00 in statutory damages for each and
- 9 every call that violated the TCPA;
- 10 d. An award of attorneys' fees and costs to counsel for Plaintiff and the proposed class;
- 11 e. An order certifying this action to be a proper class action pursuant to Federal Rule
- 12 of Civil Procedure 23, establishing appropriate class, finding that Plaintiff is a
- 13 proper representative of the class, and appointing the lawyers and law firm
- 14 representing Plaintiff as counsel for the class;
- 15 f. Such other relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any

18 and all issues in this action so triable of right.

19 Dated: September 21, 2018

Respectfully submitted,

21 **BURSOR & FISHER, P.A.**

22 By: /s/ L. Timothy Fisher
L. Timothy Fisher

23
24 L. Timothy Fisher (State Bar No. 191626)
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Attorneys for Plaintiff

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

LYLE STANDISH, on behalf of himself and all others similarly situated

DEFENDANTS

PRO-LAB, INC.

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

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.

(c) Attorneys (Firm Name, Address, and Telephone Number) L. Timothy Fisher, Bursor & Fisher P.A. 1990 N. California Blvd., Suite 940 Walnut Creek, CA 94596 Tel.: (925) 300-4455

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and codes.

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, 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): Telephone Consumer Protection Act, 47 U.S.C. Section 227. Brief description of cause: Defendant made calls to Plaintiff and the Class in violation of the 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 09/21/2018 SIGNATURE OF ATTORNEY OF RECORD /s/ L. Timothy Fisher

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Pro-Lab Sued Over Alleged Telemarketing Calls](#)
