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9 *Attorneys for Plaintiff and the Class*

10 **IN THE UNITED STATES DISTRICT COURT**  
11 **FOR THE DISTRICT OF ARIZONA**

12 BRENDA WHITTAKER, individually and on  
13 behalf of all others similarly situated,

14 Plaintiff,

15 v.

16 EMERGENCY AIR, LLC, an Arizona limited  
17 liability company,

18 Defendant.

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

19 **CLASS ACTION COMPLAINT**

20 1. Plaintiff Brenda Whittaker (“Whittaker” or “Plaintiff”) brings this Class Action  
21 Complaint against Defendant Emergency Air, LLC (“Emergency Air” or “Defendant”) to: (1)  
22 stop Defendant’s practice of placing calls using an “automatic telephone dialing system”  
23 (“ATDS”) and/or using an “artificial or prerecorded voice” to the cellular telephones of  
24 consumers nationwide without their prior express written consent, and (2) obtain redress for all  
25 persons injured by Defendant’s conduct. Plaintiff also seeks an award of statutory damages to the  
26 members of the Class, plus court costs and reasonable attorneys’ fees as set forth herein.

27 2. Plaintiff, for her complaint, alleges as follows upon personal knowledge as to  
28 herself and her own acts and experiences, and, as to all other matters, upon information and belief,  
including investigation conducted by her attorneys.





1           14. Defendant places these calls to telephones using an ATDS without consumers'  
2 prior written express consent in violation of the TCPA.

3           15. Not surprisingly, these practices have led to significant complaints from  
4 consumers, which can be found on the Internet. Consumers have publicly complained that:

- 5           • This is the robocall for Emergency Air LLC out of Mesa, AZ. The main  
6 office number is 602-400-0000 .... ask to speak to Deseray...she confirmed  
7 the 480-404-6050 was their autodialer and said they call who they want  
8 when they want. Maybe we should just keep calling them and annoying  
9 them if that's the case.<sup>1</sup>
- 10           • Heating & Cooling sales SPAM!!!<sup>2</sup>
- 11           • These guys call all the time from various numbers. I have a contact in my  
12 phone called DO NOT ANSWER AC SALES and this contact is set to go  
13 straight to voice mail so I never see it because they never leave a message.  
14 Every time I get a call from them from a new number I add that number to  
15 the Do Not Answer contact. Avoids all the aggravation. Face itz they  
16 won't stop calling<sup>3</sup>
- 17           • Unsolicited call from an air conditioning company. The name is designed  
18 to frighten you into thinking it's an emergency & answering the phone.<sup>4</sup>
- 19           • They called a week ago and I accidentally answered the call. Claiming to  
20 offer a free air conditioner check. They called again today, but I am happy  
21 for all the people who have left their comments to let me know this is just a  
22 telemarketing scam. That is the main reason I rarely answer any calls from  
23 numbers I don't know. I have blocked this number<sup>5</sup>
- 24           • Received call from Emergency Air wanting to do air conditioning  
25 inspection etc. I told them to take my number off their list and that I was  
26 reporting them to the National No Call Registry.<sup>6</sup>

27           16. At no time did Defendant obtain prior express consent from Plaintiff and the Class  
28 to receive prerecorded and/or automated telephone calls.

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25 <sup>1</sup> <https://800notes.com/Phone.aspx/1-480-404-6050>

26 <sup>2</sup> <https://800notes.com/Phone.aspx/1-480-404-6050>

27 <sup>3</sup> <https://800notes.com/Phone.aspx/1-480-689-5555/2>

28 <sup>4</sup> <https://800notes.com/Phone.aspx/1-480-689-5555/2>

<sup>5</sup> <https://800notes.com/Phone.aspx/1-480-689-5555/3>

<sup>6</sup> <https://800notes.com/Phone.aspx/1-480-689-5555/3>





1           29.     The following people are excluded from the Class: (1) any Judge or Magistrate  
2     presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries,  
3     parents, successors, predecessors, and any entity in which the Defendant or its parents have a  
4     controlling interest and its current or former employees, officers and directors; (3) persons who  
5     properly execute and file a timely request for exclusion from the Class; (4) persons whose claims  
6     in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's  
7     counsel and Defendant's counsel; and (6) the legal representatives, successors, and assignees of  
8     any such excluded persons. Plaintiff anticipates the need to amend the Class Definition following  
9     appropriate discovery.

10           30.     **Numerosity:** The exact number of members within the Class is unknown and not  
11     available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On  
12     information and belief, Defendant has placed telemarketing calls to thousands of consumers who  
13     fall into the definition of the Class. However, the exact number of members of the Class can only  
14     be identified through Defendant's records.

15           31.     **Typicality:** Plaintiff's claims are typical of the claims of other members of the  
16     Class, in that Plaintiff and the members of the Class sustained damages arising out of Defendant's  
17     uniform wrongful conduct.

18           32.     **Adequate Representation:** Plaintiff will fairly and adequately represent and  
19     protect the interests of the Class, and has retained counsel competent and experienced in complex  
20     class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no  
21     defenses unique to Plaintiff.

22           33.     **Commonality and Predominance:** There are several questions of law and fact  
23     common to the claims of Plaintiff and the Class, and those questions predominate over any  
24     questions that may affect individual members of the Class. Common questions for the Class  
25     include, but are not necessarily limited to the following:

26                   (a)     Whether Defendant's conduct violated the TCPA;

1 (b) Whether Defendant systematically made telephone calls to cellphone  
2 owners who did not previously provide Defendant and/or its agents with their prior  
3 express written consent to receive such phone calls;

4 (c) Whether Defendant made the calls with the use of an automatic telephone  
5 dialing system;

6 (d) Whether the calls featured a pre-recorded voice; and

7 (e) Whether members of the Class are entitled to treble damages based on the  
8 willfulness of Defendant's conduct.

9 34. **Conduct similar to the Class as a Whole:** Rule 23(b)(2) certification is warranted  
10 because Defendant has acted or refused to act (and continues to so act) on grounds generally  
11 applicable to the Class as a whole and hasn't treated any particular Class Member differently. As  
12 such, injunctive relief and corresponding declaratory relief are warranted.

13 35. **Superiority & Manageability:** This case is also appropriate for class certification  
14 because class proceedings are superior to all other available methods for the fair and efficient  
15 adjudication of this controversy. Joinder of all parties is impracticable, and the damages suffered  
16 by the individual members of the Class will likely be relatively small, especially given the burden  
17 and expense of individual prosecution of the complex litigation necessitated by Defendant's  
18 actions. Thus, it would be virtually impossible for the individual members of the Class to obtain  
19 effective relief from Defendant's misconduct. Even if members of the Class could sustain such  
20 individual litigation, it would still not be preferable to a class action, because individual litigation  
21 would increase the delay and expense to all parties due to the complex legal and factual  
22 controversies presented in this Complaint. By contrast, a class action presents far fewer  
23 management difficulties and provides the benefits of single adjudication, economy of scale, and  
24 comprehensive supervision by a single Court. Economies of time, effort and expense will be  
25 fostered and uniformity of decisions ensured. Also, there are no pending governmental actions  
26 against Defendant for the same conduct.



**FIRST CAUSE OF ACTION**

**Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*  
(On behalf of Plaintiff and the No Consent Class)**

36. Plaintiff incorporates by reference the foregoing allegations as if fully set forth herein.

37. Defendant made unsolicited and unwanted telemarketing calls to cellular telephone numbers belonging to Plaintiff and the other members of the No Consent Class, without their prior express written consent in an effort to generate leads for Defendant's products and services.

38. Defendant failed to obtain any prior express consent that included, as required by 47 C.F.R. § 64.1200(f)(8)(i), a "clear and conspicuous" disclosure informing the person signing that:

(A) By executing the agreement, such person authorizes the seller to deliver or cause to be delivered to the signatory telemarketing calls using an automatic telephone dialing system or an artificial or prerecorded voice; and

(B) The person is not required to sign the agreement (directly or indirectly), or agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

39. Further, Defendant made the telephone calls using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and/or to receive and store lists of phone numbers, and to dial such numbers, *en masse*, simultaneously and without human intervention.

40. By making unsolicited telephone calls to Plaintiff and members of the No Consent Class's cellular telephones without prior express consent, and by utilizing an pre-recorded voice message and/or ATDS, Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii).

41. As a result of Defendant's unlawful conduct, Plaintiff and the members of the No Consent Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular telephones and, under Section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.



**JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: August 13, 2018

**BRENDA WHITTAKER**, individually and on behalf of all others similarly situated,

By: s/ Penny L. Koepke  
One of Plaintiff's Attorneys  
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Attorneys for Plaintiff and the Class

*\* Pro Hac Vice application to be filed*

www.azd.uscourts.gov/cgi-bin/generate\_civil\_js44.pl

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

## Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the  
Complaint or Notice of Removal.**

**Plaintiff(s): Brenda Whittaker**

**Defendant(s): Emergency Air, LLC, an Arizona  
limited liability company**

County of Residence: Yavapai

County of Residence: Maricopa

County Where Claim For Relief Arose: Yavapai

Plaintiff's Atty(s):

Defendant's Atty(s):

**Penny Koepke (Brenda Whittaker )  
Maxwell & Morgan, P.C.  
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Mesa, Arizona 85206  
480-833-1001**

II. Basis of Jurisdiction:

**3. Federal Question (U.S. not a party)**

III. Citizenship of Principal  
Parties (Diversity Cases Only)

Plaintiff:-1 Citizen of This State  
Defendant:-1 Citizen of This State

IV. Origin :

**1. Original Proceeding**

V. Nature of Suit:

**890 Other Statutory Actions**

VI. Cause of Action:

**47 U.S.C. § 227, et seq., Telephone Consumer Protection Act**

VII. Requested in Complaint

Class Action: Yes  
Dollar Demand:  
Jury Demand: Yes

VIII. This case is not related to another case.

**Signature: s/Penny L. Koepke**

**Date: 7/18/18**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the Back button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Emergency Air Sued by Arizona Consumer Over Alleged Robocalls](#)

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