



decided that “banning” such calls made without consent was “the only effective means of protecting telephone consumers from this nuisance and privacy invasion.” Pub. L. No. 102-243, §§ 2(10-13) (Dec. 20, 1991), codified at 47 U.S.C. § 227; see also *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012) (“The Act bans certain practices invasive of privacy”).

3. In contravention of the aforementioned Act, Defendants have placed numerous automated calls to the Plaintiffs’ cellular telephones without their consent thereby imparting concrete and particularized injury upon Plaintiffs, including the very harms that Congress sought to prevent - a “nuisance and invasion of privacy,” depleting the battery life on their cellular telephones, occupying their telephone lines, wasting their time, and using minutes allocated to them by their cellular telephone service provider.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter under 28 U.S.C. § 1331. The TCPA is a federal statute. Venue here is proper under 28 U.S.C. § 1391(b). A substantial part of the events giving rise to Plaintiffs’ action occurred here, and Defendant Mediacredit has its principal place of business in this judicial district.

#### **PARTIES**

5. Plaintiff Marilynn Martinez (“Martinez”) is a natural person who, at all times relevant to this action, was a resident of Orlando, Florida.

6. At all times relevant to this action, Martinez has been the regular user of the cellular telephone assigned the cellular telephone number ending in “5105.”

7. Martinez is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. §153(39).

8. Plaintiff Todd Hornberger (“Hornberger”) is a natural person who at all relevant times resided in Gainesville, Florida.

9. At all times relevant to this action, Hornberger has been the regular user of the cellular telephone assigned the cellular telephone number (352) 575-xxxx.

10. Hornberger is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. §153(39).

11. Plaintiff Eric Johnson (“Johnson”) is a natural person who at all relevant times resided in Oklahoma.

12. At all times relevant to this action, Johnson has been the regular user of the cellular telephone assigned the cellular telephone number (405) 305-xxxx.

13. Johnson is, and at all times mentioned herein was a “person” as defined by 47 U.S.C. §153(39).

14. Defendant Mediacredit, Inc. (“Mediacredit”) is a Missouri corporation with principal offices located in St. Louis, MO and whose registered agent for service of process in the State of Missouri is STK Registered Agent, Inc., 900 W. 48th St., Ste. 900, Kansas City, MO 64112.

15. Upon information and belief, Mediacredit is in a business the primary purpose of which is to collect medical debt on behalf of hospitals, private physician practices, and hospital-based physician practices.

16. Mediacredit has a public Utility Commission of Texas Automatic Dial Announcing Device permit, no. 150005, which it first obtained in 2015 and last renewed in January 2017.

17. Defendant HCA Health Services of Florida, Inc. d/b/a Osceola Regional Medical Center (“HCA”) is a Florida corporation, with its principal place of business at One Park Plaza, Nashville, TN 37203.

18. On information and belief, it is HCA's policy and practice to assign some or all of its delinquent accounts to Mediacredit for collection.

19. Defendants are and at all times mentioned herein were "person[s]" as defined by 47 U.S.C. §153(39).

**THE TELEPHONE CONSUMER PROTECTION  
ACT OF 1991 (TCPA), 47 U.S.C. § 227**

20. In 1991, Congress enacted the TCPA, 47 U.S.C. § 227, et seq., in response to a growing number of consumer complaints regarding certain telemarketing practices.

21. The TCPA regulates, among other things, the use of prerecorded messages. 47 U.S.C. §227(a)(1). Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of prerecorded or artificial voice to a wireless number in the absence of an emergency or the prior express consent of the called party.

22. According to findings by the Federal Communication Commission ("FCC"), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*, FCC 03-153, 68 Fed. Reg. 44144, 44165 (July 25, 2003) ("2003 FCC Ruling"). The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *Id.*

23. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the "prior express consent" of the called party. *See In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.

Rcd. 559 ¶1 (Jan. 4, 2008) (“2008 FCC Ruling”). The FCC “emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed.” *Id.* at ¶9-10.

24. In the same Declaratory Ruling, the FCC emphasized that both the creditor and the third party debt collector may be held liable under the TCPA for debt collection calls. *Id.* at ¶10 & n.38. (“A creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission’s rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call....A third party collector may also be liable for a violation of the Commission’s rules.”)

25. The FCC also held “[c]onsumers may revoke consent in any manner that clearly expresses a desire not to receive further messages, and that callers may not infringe on that ability by designating an exclusive means to revoke.” *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Declaratory Ruling and Order, FCC 15-72, 2015 FCC LEXIS 1586, ¶ 63, 30 FCC Rcd 7961, 2015 FCC LEXIS 1586, 62 Comm. Reg. (P & F) 1539 (F.C.C. July 10, 2015) (“FCC 2015 Order”).

#### **FACTUAL ALLEGATIONS RELATING TO MARTINEZ**

26. In 2015 and 2016, Martinez received numerous telephone calls on her cellphone ending in “5105” from Mediacredit regarding a debt allegedly owed to HCA by her adult son.

27. Upon information and belief, Mediacredit used a predictive dialer manufactured by Noble Systems Corporation to place these calls to Martinez’s cellular telephone number.

28. At no time leading up to these calls did Martinez provide either Defendant with her cellphone number to be called regarding her son's alleged debt or otherwise give either Defendant consent to call her regarding her son's alleged debt.

29. Several of these calls used an artificial or prerecorded voice stating as follows:

“We are calling from Mediacredit on behalf of Osceola Regional Medical Center. This is a call from a debt collector. Please return our call at 800-823-2318 Monday through Friday during normal business hours. Thank you.”

30. Upon information and belief, Martinez's son gave HCA Martinez's name and cell phone number as the person to notify regarding the outcome of his medical treatment or any emergencies, not as a person to notify regarding an alleged debt.

31. By making these unlawful phone calls, Defendants caused Martinez the very harm that Congress sought to prevent - a “nuisance and invasion of privacy.”

32. Defendants' aggravating and annoying phone calls trespassed upon and interfered with Martinez's rights and interests in her cellular telephone and cellular telephone line, occupied the space in her voicemail, and intruded upon her seclusion.

33. Defendants' phone calls further harmed Martinez by wasting her time.

#### **FACTUAL ALLEGATIONS RELATING TO HORNBERGER**

34. In an attempt to contact a third party named “Gloria” for the purpose of attempting to collect a debt, Mediacredit placed numerous calls to cellular telephone number (352) 575-xxxx—a number for which Mr. Hornberger is the sole subscriber.

35. By way of example, Mediacredit called Mr. Hornberger's cellular telephone number on, among other dates, August 2, 2016, September 13, 2016, and September 26, 2016.

36. Upon information and good faith belief, Medicredit's records will show additional calls made by it to Mr. Hornberger's cellular telephone number with an automatic telephone dialing system.

37. Upon information and belief, Medicredit used a predictive dialer manufactured by Noble Systems Corporation to place these calls to Mr. Hornberger's cellular telephone number.

38. Medicredit called Mr. Hornberger's cellular telephone number from (800) 823-2318, a number assigned to Medicredit.

39. Medicredit placed all of the above-referenced calls to Mr. Hornberger in an effort to contact and collect a debt allegedly owed by a third party, unknown to Mr. Hornberger, named "Gloria".

40. On multiple occasions, Mr. Hornberger answered Medicredit's calls and spoke to one of Medicredit's employees.

41. Mr. Hornberger explained that Medicredit had the wrong number, and that he did not know the person Medicredit was calling for.

42. Mr. Hornberger also instructed Medicredit to stop calling him.

43. No matter, despite Mr. Hornberger's demands that the calls stop, and despite informing Medicredit that it was calling the wrong person, Medicredit continued to place calls to Mr. Hornberger's cellular telephone number.

44. Upon answering several of Medicredit's calls, a noticeable pause greeted Mr. Hornberger before being connected with a live customer service representative.

45. In addition, Mr. Hornberger was greeted with a prerecorded message on some of the calls.

46. Mediacredit did not have Mr. Hornberger's prior express consent to make any calls to his cellular telephone number.

47. Rather, Mediacredit was attempting to reach a third party named Gloria who is unknown to Mr. Hornberger.

48. Mr. Hornberger never provided his cellular telephone number to Mediacredit.

49. Mr. Hornberger never had any business relationship with Mediacredit.

50. By making these unlawful phone calls, Mediacredit caused Mr. Hornberger the very harm that Congress sought to prevent - a "nuisance and invasion of privacy."

51. Mediacredit's aggravating and annoying phone calls trespassed upon and interfered with Mr. Hornberger's rights and interests in his cellular telephone and cellular telephone line, occupied the space in his voicemail, and intruded upon his seclusion.

52. Mediacredit's phone calls further harmed Mr. Hornberger by wasting his time.

53. As well, Mediacredit's telephone calls at issue depleted or consumed, directly or indirectly, Mr. Hornberger's cellular telephone minutes, for which he paid a third party.

#### **FACTUAL ALLEGATIONS RELATING TO JOHNSON**

54. In an attempt to contact a third party named "Isabella," Mediacredit placed numerous calls to cellular telephone number (405) 305-xxxx—a number for which Mr. Johnson is the sole subscriber.

55. By way of example, Mediacredit called Mr. Johnson's cellular telephone number on, among other dates, March 6, 2017 and March 16, 2017.

56. Upon information and good faith belief, Mediacredit's records will show additional calls made by it to Mr. Johnson's cellular telephone number with an automatic telephone dialing system.

57. Upon information and belief, Mediacredit used a predictive dialer manufactured by Noble Systems Corporation to place these calls to Mr. Johnson's cellular telephone number.

58. Mediacredit called Mr. Johnson's cellular telephone number from (800) 888-2238, a number assigned to Mediacredit.

59. Mediacredit placed all of the above-referenced calls to Mr. Johnson in an effort to contact a third party, unknown to Mr. Johnson, named "Isabella".

60. On at least two occasions, Mr. Johnson answered Mediacredit's calls and spoke to one of Mediacredit's employees.

61. Mr. Johnson informed Mediacredit that he was not Isabella, did not know Isabella, and that Mediacredit should stop calling him.

62. Despite informing Mediacredit that it was calling the wrong number, Mediacredit continued to place calls to Mr. Johnson's cellular telephone number.

63. Mr. Johnson was greeted with a prerecorded message on some of Mediacredit's calls.

64. Mediacredit did not have Mr. Johnson's prior express consent to make any calls to his cellular telephone number.

65. Rather, Mediacredit was attempting to reach a third party named Isabella who is unknown to Mr. Johnson.

66. Mr. Johnson never provided his cellular telephone number to Mediacredit.

67. Mr. Johnson never had any business relationship with Mediacredit.

68. By making these unlawful phone calls, Mediacredit caused Mr. Johnson the very harm that Congress sought to prevent - a "nuisance and invasion of privacy."

69. Mediacredit's aggravating and annoying phone calls trespassed upon and interfered with Mr. Johnson's rights and interests in his cellular telephone and cellular telephone line, occupied the space in his voicemail, and intruded upon his seclusion.

70. Mediacredit's phone calls further harmed Mr. Johnson by wasting his time.

71. As well, Mediacredit's telephone calls at issue depleted or consumed, directly or indirectly, Mr. Johnson's cellular telephone minutes, for which he paid a third party.

#### **FURTHER COMMON FACTUAL ALLEGATIONS**

72. Defendants' unlawful acts, as described above, were committed knowingly and willfully in light of the fact that Mediacredit has been sued on numerous prior occasions for the very same conduct.

73. Upon information and good faith belief, and in light of the frequency, character, large number, and nature of the calls, Defendants placed its calls to Plaintiffs' cellular telephone numbers using an automatic telephone dialing system, as defined by 47 U.S.C. § 227(a)(1).

74. Upon information and good faith belief, and in light of the frequency, large number, nature, and character of the calls, Defendants placed its calls to Plaintiffs' cellular telephone numbers by using (a) equipment which has the capacity (i) to store or produce telephone numbers to be called, using a random or sequential number generator, and (ii) to dial such numbers, or (b) technology with the capacity to dial random or sequential numbers, or (c) hardware, software, or equipment that the FCC characterizes as an automatic telephone dialing system through the following, and any related, declaratory ruling and order: *FCC 2015 Order*, FCC 15-72, 2015 FCC LEXIS 1586, 30 FCC Rcd 7961, 2015 FCC LEXIS 1586, 62 Comm. Reg. (P & F) 1539 (F.C.C. July 10, 2015).

75. Upon information and good faith belief, and in light of the frequency, large number, nature, and character of the calls, Defendants placed its calls to Plaintiffs' cellular telephone number by using (a) an automated dialing system that uses a complex set of algorithms to automatically dial consumers' telephone numbers in a manner that "predicts" the time when a consumer will answer the phone and a person will be available to take the call, or (b) equipment that dials numbers and, when certain computer software is attached, also assists persons in predicting when a sales agent will be available to take calls, or (c) hardware, that when paired with certain software, has the capacity to store or produce numbers and dial those numbers at random, in sequential order, or from a database of numbers, or (d) hardware, software, or equipment that the FCC characterizes as a predictive dialer through the following, and any related, reports and orders, and declaratory rulings: *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 17 FCC Rcd 17459, 17474 (September 18, 2002); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd 14014, 14092-93 (July 3, 2003); *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd 559, 566 (Jan. 4, 2008); *FCC 2015 Order*, FCC 15-72, 2015 FCC LEXIS 1586, 30 FCC Rcd 7961, 2015 FCC LEXIS 1586, 62 Comm. Reg. (P & F) 1539 (F.C.C. July 10, 2015).

76. Upon information and good faith belief, Defendant utilized hardware and software with the capacity to store telephone numbers and to dial such numbers sequentially, predictively, or randomly, and to dial telephone numbers without human intervention.

77. Upon information and good faith belief, Defendants used such hardware and software to place the calls at issue to Plaintiffs' cellular telephone numbers.

78. Defendants did not place any calls to Plaintiffs' cellular telephone numbers for emergency purposes.

79. Upon information and good faith belief, Defendants placed the calls at issue to Plaintiffs willfully and knowingly in that it consciously and deliberately made the calls referenced herein.

80. Upon information and good faith belief, Defendants had knowledge that it was using, and intended to use, an automatic telephone dialing system or an artificial or prerecorded voice to place the calls at issue to Plaintiffs.

81. In addition, HCA knew or should have known Medicredit's history as a serial TCPA violator. In fact, Medicredit has been sued previously for violations of the TCPA and recently settled a class action. *See Prater v. Medicredit, Inc.* et al., No. 4:14-cv-00159-ERW (E.D. Mo. Filed Jan. 28, 2014) and Doc 89 (Final Approval Granted 12/07/15).

82. Despite this knowledge, HCA continues to use Medicredit's services and, in doing so, continues to accept and retain the pecuniary benefits derived from Medicredit's unlawful activities.

83. In addition to being strictly liable for Medicredit's violations of the TCPA pursuant to the FCC 2008 Order, HCA's ratification of Medicredit's continued and habitual TCPA violations subject HCA to vicarious liability under common law agency principles. See Restatement (Third) of Agency § 4.01(1) (2006) ("Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.").

#### **CLASS ALLEGATIONS**

84. Plaintiffs also bring this action on behalf of several classes of other similarly situated individuals, seeking damages and any other available legal or equitable remedies resulting from

the illegal actions of Defendants in negligently, knowingly, or willfully contacting them on their cellular telephones in violation of the TCPA.

85. Accordingly, the proposed No Consent Class and sub-classes are defined as follows:

No Consent Class

All persons within the United States to whose cellular telephone number Mediacredit placed a debt collection related telephone call between July 14, 2015 and the date of certification through the use of any automatic telephone dialing system or artificial or prerecorded voice where such person did not provide that number in connection with the alleged debt.

Person to Notify Subclass

All persons within the United States to whose cellular telephone number Mediacredit placed a debt collection related telephone call between July 14, 2015 and the date of certification through the use of any automatic telephone dialing system or artificial or prerecorded voice where such number was listed as a “person to notify” or “emergency contact.”

86. Additionally, the proposed Wrong Number/Cease Contact class is defined as follows:

Wrong Number/Cease Contact Class

All persons within the United States to whose cellular telephone number Mediacredit placed a debt collection related telephone call between July 14, 2015 and the date of certification through the use of any automatic telephone dialing system or artificial or prerecorded voice where such person informed Mediacredit that it had the wrong number or requested that Mediacredit cease contact.

87. HCA is liable to the class member in the above classes for any calls made on HCA’s behalf.

88. Plaintiffs represent, and are members of the Classes, having been called by Mediacredit on their cellular telephone through the use of an automatic telephone dialing system or artificial or prerecorded voice after defendant obtain their telephone numbers from a third party and, for Plaintiffs Hornberger and Johnson, after they instructed Mediacredit it was calling the wrong number.

89. Defendants and their employees and agents are excluded from the Classes.

90. Plaintiffs do not know the number of members in the Classes, but believe the Class members number in the thousands. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.

91. The Classes are so numerous that the individual joinder of all their members is impractical. While the exact number and identities of the Class members are known only to Defendants at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and believes that the Classes include thousands of members. Plaintiffs allege that the Class members may only be ascertained through the records maintained by Defendants.

92. Common questions of fact and law exist as to all members of the Classes which predominate over any questions affecting only individual members of the Classes. These common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:

- a. Whether, within the class period, Mediacredit made any call (other than a call made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiffs and the Class members were damaged thereby, and the extent of damages for such violation;
- c. Whether HCA is vicariously liable for the class placed on its behalf; and
- d. Whether Mediacredit should be enjoined from engaging in such conduct in the future.

93. As persons who received calls from Mediacredit using an automatic telephone dialing system or an artificial or prerecorded voice, without their prior express consent, Plaintiffs are asserting claims that are typical of the Classes.

94. Plaintiffs will fairly and adequately protect the interests of the members of the Classes. Plaintiffs have retained attorneys experienced in the prosecution of class actions.

95. A class action is superior to other available methods of fair and efficient adjudication of the controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, it would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

96. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the this Class members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

97. Defendants have acted or refused to act in respects generally applicable to the Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

**FIRST CAUSE OF ACTION**  
**Violations of the TCPA, 47 U.S.C. § 227**

98. Plaintiffs re-allege and incorporates the foregoing allegations as if set forth fully herein.

99. It is a violation of the TCPA to make “any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service....” 47 U.S.C. § 227(b)(1)(A)(iii).

100. Medicredit caused equipment having the capacity to dial numbers without human intervention to be used to make non-emergency telephone calls to the cellular telephones of Plaintiffs and the other members of the Class defined above.

101. Medicredit’s calls also utilized an artificial and/or prerecorded voice.

102. These calls were made without regard to whether or not Defendants had first obtained express permission from the called party to make such calls or after any consent was revoked.

103. As such, the calls at issue were willful or, at a minimum, negligent.

104. Defendants have, therefore, violated Section 227(b)(1)(A)(iii) of the TCPA by causing an automatic telephone dialing system and/or artificial or prerecorded voice to be used to make non-emergency telephone calls to Plaintiffs and the other members of the Class without their prior express consent.

105. HCA is strictly liable for Medicredit’s violations for the calls placed on its behalf.

106. As a result of Defendants’ conduct and pursuant to Section 227(b)(3)(B) of the TCPA, Plaintiffs and the other members of the putative Class are each entitled to a minimum of \$500.00 in damages for each violation and if willfulness is proven up to \$1,500 for each violation.

107. Plaintiffs and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future, pursuant to 47 U.S.C. § 227(b)(3)(A).

WHEREFORE, Plaintiffs, on behalf of themselves and the other members of the Class, respectfully request the following relief against Defendants:

1. A declaration that Defendants practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227;

2. An injunction requiring Defendants not to call any third parties to insure that Plaintiffs are not called now or when Plaintiffs obtain additional telephone numbers in the future;

3. An injunction requiring Defendants to file quarterly reports of third party audits with the Court on its system and procedures not to call any third parties to insure that Plaintiffs are not called in the future;

4. An injunction requiring Defendants not to call any third parties to insure that class members are not called if they obtain additional telephone numbers in the future;

5. An injunction requiring Defendants to file quarterly reports of third party audits with the Court on its system and procedures not to call any third parties to insure that class members are not called in the future;

6. An award of actual damages in an amount to be proven at trial;

7. An award of statutory damages for Plaintiffs and each Class member in the amount of \$500.00 for each and every call that violated the TCPA;

8. An award of treble damages, as provided by statute, of up to \$1,500.00 for Plaintiffs and each Class member for each and every call that violated the TCPA;

9. An order certifying this action to be a proper class action pursuant to the Federal Rules of Civil Procedure 23, establishing the appropriate Classes and any Sub-classes the Court deems appropriate, finding that Plaintiffs are proper representative of the Classes, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Classes;

10. Attorney's fees, litigation expenses and costs of suit; and
11. Such further and other relief the Court deems reasonable and just.

### **JURY TRIAL REQUEST**

Plaintiffs request a trial by jury on all issues so triable.

Dated: May 24, 2017.

Respectfully submitted,

By: /s/ Timothy J. Sostrin

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