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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

Erik Knutson, Individually and On Behalf of All Others Similarly Situated,
 	
               Plaintiff,
v.
 	
Sirius XM Radio Inc.
 	
               Defendant.
	Case No.: 3:12-cv-00418-AJB-DHB
	
	FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES
	
	Jury Trial Demanded

INTRODUCTION

1. Erik Knutson ("Plaintiff") brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Sirius XM Radio Inc. ("Sirius"), in negligently, and/or willfully contacting Plaintiff through a marketing messages on Plaintiff's cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., ("TCPA"), thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

JURISDICTION AND VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff seeks up to $1,500 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class number in the tens of thousands, exceeds the $5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a national class, which will result in at least one class member belonging to a different state than that of Sirius, providing jurisdiction under 28 U.S.C. Section 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Southern District of California pursuant to 18 U.S.C. § 1391(b) and 1441(a) because the events giving rise to Plaintiff's causes of action against Sirius occurred within the State of California and the County of San Diego, within this judicial district.

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PARTIES

4.   Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was a, "person" as defined by 47 U.S.C. § 153 (39).

5.   Plaintiff is informed and believes, and thereon alleges, that Sirius is, and at all times mentioned herein was, a corporation whose primary corporate address is in New York, New York, and Sirius is therefore a citizen of New York for diversity purposes. Sirius is, and at all times mentioned herein was, a corporation and a "person," as defined by 47 U.S.C. § 153 (39). Sirius provides various consumer credit products and advertises those products through the use of telephone calls. Plaintiff alleges that at all times relevant herein Sirius conducted business in the State of California and in the County of San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

6.   At all times relevant, Plaintiff was a citizen of the State of California. Plaintiff is, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

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

8.   At all times relevant Sirius conducted business in the State of California and in the County of San Diego, within this judicial district.

9.   Plaintiff, on or before November 12, 2011, purchased a Toyota Tacoma truck which, for marketing purposes, includes a "free" three month trial subscription to Sirius XM Radio.

10. At no time did Plaintiff ever provide his current cellular telephone to Defendant through any medium.

11. At no time did Plaintiff ever enter into a business relationship with Defendant.

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12. At no time did Plaintiff ever submit a credit application to Defendant for the extension of credit.

13. Subsequently, Sirius obtained Plaintiff's contact information through unknown means.

14. On or about January 27, 2012 Defendant contacted Plaintiff on Plaintiff's cellular telephone via an "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) using an "artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227 (b)(1)(A).

15. Subsequently, on or about January 30, 2012 at or around 8:30 PM Defendant contacted Plaintiff on Plaintiff's cellular telephone via an ATDS.

16. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

17. The telephone number Sirius called was assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

18. These telephone calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

19. To date, Plaintiff has received a total of three phone calls where it takes at least a minute for an agent of Sirius to pick up the other end of the line because Sirius is using an ATDS.

CLASS ACTION ALLEGATIONS

20. Plaintiff brings this action on behalf of himself and on behalf of and all others similarly situated (the "Class").

21. Plaintiff represents, and is a member of the Class, consisting of:

> All persons within the United States who received any unsolicited telephone call/s from Defendant or its agent/s and/or employee/s to said person's cellular telephone made through the use of any automatic telephone dialing system or with an artificial or prerecorded voice within

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the four years prior to the filing of the Complaint.

22.   Sirius and its employees or agents are excluded from the Class.   Plaintiff does not know the number of members in the Class, but believes the Class members number in the hundreds of thousands, if not more.   Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

23.   Plaintiff and members of the Class were harmed by the acts of Sirius in at least the following ways: Sirius, either directly or through its agents, illegally contacted Plaintiff and the Class members via their cellular telephones by using marketing and artificial or prerecorded voice messages, thereby causing Plaintiff and the Class members to incur certain cellular telephone charges or reduce cellular telephone time for which Plaintiff and the Class members previously paid, and invading the privacy of said Plaintiff and the Class members.   Plaintiff and the Class members were damaged thereby.

24.   This suit seeks only damages and injunctive relief for recovery of economic injury on behalf of the Class and it expressly is not intended to request any recovery for personal injury and claims related thereto.   Plaintiff reserves the right to expand the Class definition to seek recovery on behalf of additional persons as warranted as facts are learned in further investigation and discovery.

25.   The joinder of the Class members is impractical and the disposition of their claims in the Class action will provide substantial benefits both to the parties and to the court.   The Class can be identified through Sirius' records or Sirius' agents' records.

26.   There is a well-defined community of interest in the questions of law and fact involved affecting the parties to be represented.   The questions of law and

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