

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

YEFIM ELIKMAN, individually and on behalf of)	
classes of similarly situated individuals,)	
)	
<i>Plaintiff,</i>)	No. 15-cv-02093
)	
v.)	
)	
SIRIUS XM RADIO, INC., a Delaware)	
corporation, CAREER HORIZONS, INC., an)	Hon. Joan H. Lefkow
Indiana corporation,)	
)	
<i>Defendants.</i>)	

SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiff Yefim Elikman (“Plaintiff”) brings this second amended class action complaint against Defendants Sirius XM Radio, Inc. (“Sirius XM”) and Career Horizons, Inc. d/b/a TeleServices Direct (“TeleServices”) (collectively “Defendants”), to stop Defendants’ unlawful telephone solicitation practices in the form of unauthorized telephone calls using an automatic telephone dialing system (“ATDS”), and to obtain redress for all persons injured by their 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, including investigation conducted by his attorneys.

NATURE OF THE ACTION

1. In a misguided effort to market its satellite radio subscription services, Sirius XM, together with its agent TeleServices, established an automated calling operation to place unsolicited automated calls to the cellular telephones of thousands of consumers nationwide.

2. Defendants Sirius XM and TeleServices violated federal law when the automated calling operation established, directed, and operated by Defendants to market Sirius XM's satellite radio service, placed unauthorized automated telephone calls using an ATDS ("robocalls") to the cellular telephones of individuals throughout the nation.

3. Defendants Sirius XM and TeleServices also violated federal law when the automated calling operation established, directed, and operated by Defendants to market Sirius XM's satellite radio service, placed unauthorized telephone solicitation calls to the telephones of individuals throughout the nation whose phone numbers were registered with the National Do-Not-Call registry, as established by 47 U.S.C. § 227(c).

4. By effectuating these unauthorized calls, Defendants have violated the called parties' statutory rights and have caused such call recipients actual harm, not only because the called parties were subjected to the aggravation and invasion of privacy that necessarily accompanies unsolicited telephone solicitation calls, but also because the recipients sometimes have to pay their cellular phone providers for receiving the calls or incur a usage deduction on their plan.

5. In order to redress these injuries, Plaintiff, on behalf of himself and two nationwide classes brings suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the "TCPA"), which protects the privacy right of consumers to be free from receiving unsolicited automated telephone calls.

6. On behalf of the classes, Plaintiff seeks an injunction requiring Defendants to cease all unauthorized automated telephone calls, and an award of statutory damages to the members of the classes, together with costs and reasonable attorneys' fees.

JURISDICTION AND VENUE

7. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331, as the action arises under the federal Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*

8. Venue is proper in the Northern District of Illinois under 28 U.S.C. § 1391(b) because Plaintiff resides in this District, Defendants transact business in this District, and a substantial part of the events concerning the unauthorized robocalls at issue occurred in this District, as Plaintiff's cellular telephone received Defendants' unsolicited robocalls within this District.

PARTIES

9. Plaintiff Elikman is a resident of the State of Illinois.

10. Defendant Sirius XM Radio, Inc. is a nationwide provider of satellite radio services. Sirius XM is a Delaware corporation with its principal place of business located in New York. Sirius XM conducts business in this District, and conducts business elsewhere throughout the United States.

11. Defendant Career Horizons, Inc. d/b/a TeleServices Direct is a global operator of call centers located in the United States and in other countries. TeleServices is an Indiana corporation with its principal place of business located in Indiana.

COMMON ALLEGATIONS OF FACT

12. Sirius XM is a nationwide provider of a paid subscription satellite radio service.

13. TeleServices is a global operator of call centers that works with various companies to establish automated phone call operations that market their goods and services by

using an ATDS to place telephone calls to the phone numbers of thousands of potential customers.

14. In an effort to promote its satellite radio service, Sirius XM contracted with TeleServices to establish an automated calling operation to solicit potential customers.

15. Sirius XM and TeleServices both shared control over various aspects of the day-to-day operations of the automated calling operation.

16. Sirius XM authorized and directed the automated calling operation to act on its behalf and establish contractual relationships between Sirius XM and called parties who agreed to purchase Sirius XM's satellite radio service as a result of a successful telephone solicitation call.

17. Starting at least as early as 2014, Defendants engaged in the mass transmission of unsolicited robocalls to the cell phones nationwide of what they hoped were potential customers of Sirius XM services.

18. Beginning in or about December 2014, in an apparent effort to sell Sirius XM's satellite radio subscription service to Plaintiff, Defendants began placing robocalls to Plaintiff's cellular telephone.

19. Specifically, Plaintiff's cell phone would ring and indicate that he was receiving a phone call from 888-539-7474, a phone number associated with Defendants' automated calling operation that markets Sirius XM's satellite radio service.

20. These automated solicitation calls, including the calls made to Plaintiff, were placed en masse using "predictive dialing" technology, which automatically places calls without

human intervention until the called party answers the call, at which time such automatic dialer attempts to connect the called party with a human representative.

21. When Plaintiff would answer the phone calls, the call would be connected to Defendants' automated calling operation and a sales representative would eventually come on the line and attempt to make a "sales pitch" promoting Sirius XM's satellite radio service.

22. For example, on or about February 26, 2015, Plaintiff received yet another unauthorized robocall from Defendants. When Plaintiff answered the call, a sales associate introduced herself by name, stated that she was calling on behalf of Sirius XM Radio, and proceeded to make a sales pitch. The sales associate told Plaintiff to call 888-553-9879 – another phone number associated with Defendants' automated calling operation that markets Sirius XM's satellite radio service – if he was interested in purchasing a subscription in the future.

23. Plaintiff received these unwanted and unsolicited robocalls one to two times a week, every week, over the past several months preceding the filing of the instant complaint.

24. Plaintiff has never been a Sirius XM subscriber and at no time did Plaintiff provide Sirius XM or TeleServices with consent, including any written consent, to place any telephone calls, including any calls made through an ATDS, to his cellular telephone number.

25. Plaintiff's cellular telephone number has been registered with the National Do-Not-Call Registry since August 2006 and at all times that he received robocalls from Defendants.

26. Plaintiff has never contacted Sirius XM or TeleServices for any purpose and has never had any business relationship with either Defendant.

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