

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

MATTHEW GROGAN, LATIA  
BRYANT, CHAD SEVERSON,  
AND SERGE BELOZEROV on  
behalf of themselves and all others  
similarly situated,

Plaintiff,

v.

AARON'S INC.

Defendant.

Case No. 1:18-cv-02821-JPB

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF PURSUANT  
TO 47 U.S.C. § 227 *ET SEQ.*  
(TELEPHONE CONSUMER  
PROTECTION ACT)**

CLASS ACTION

**DEMAND FOR JURY TRIAL**

Plaintiff Matthew Grogan, LaTia Bryant, Chad Severson, and Serge Belozarov (collectively, "Plaintiffs"), individually and on behalf of all others similarly situated, allege on personal knowledge, investigation of his counsel, and on information and belief as follows:

**NATURE OF ACTION**

1. This case involves activities conducted by Aaron's Inc. ("Aaron's") contacting individuals believed to be its debtors through use of prerecorded messages and automated calls in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, and the Federal Communication

Commission rules promulgated thereunder, 47 C.F.R. § 64.1200 (hereinafter referred to as the “TCPA”).

2. As described more fully below, Aaron’s has violated the TCPA by making calls to Plaintiffs and Class Members using an “automatic telephone dialing system” and an “artificial or prerecorded voice” as described in 47 U.S.C. § 227(b)(1), without Plaintiffs’ and Class Members’ prior express consent within the meaning of the TCPA.

3. Plaintiffs bring this action for injunctive relief and statutory damages, all arising from the illegal activities of Aaron’s, which used pre-recorded and automatically dialed messages to solicit payment from individuals it presumably believed to be its debtors.

#### **JURISDICTION AND VENUE**

4. This matter in controversy exceeds \$5,000,000, as each member of the proposed Class of thousands is entitled to up to \$1,500.00 in statutory damages for each call that has violated the TCPA. Accordingly, this Court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). Further, Plaintiffs allege a national class, which will result in at least one Class member belonging to a different state. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

5. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

6. This Court has personal jurisdiction over Aaron’s because Aaron’s headquarters is located in Atlanta, Georgia. Aaron’s is therefore a resident of the State of Georgia for purposes of personal jurisdiction.

7. Venue is proper in the United States District Court for the Northern District of Georgia pursuant to 28 U.S.C. §§ 1391(b)-(c) and 1441(a) because Aaron's is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced and Aaron's contacts with this District are sufficient to subject it to personal jurisdiction.

**PARTIES**

8. Plaintiff Matthew Grogan is, and at all times mentioned herein was, an individual citizen of the State of Ohio.

9. Plaintiff LaTia Bryant is, and at all times mentioned herein was, an individual citizen of the State of South Carolina.

10. Plaintiff Chad Severson is, and at all times mentioned herein was, an individual citizen of the State of Illinois.

11. Plaintiff Serge Belozarov is, and at all times mentioned herein was, an individual citizen of the State of Massachusetts.

12. Defendant Aaron's is a Georgia corporation, with its principal place of business in Atlanta, Georgia. The company leases furniture, appliances, and electronic devices to its often credit-challenged customers.

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

13. In 1991, Congress enacted the TCPA,<sup>1</sup> in response to a growing number of consumer complaints regarding certain telemarketing practices.

14. The TCPA regulates, among other things, the use of automated telephone equipment, or "autodialers." Specifically, the plain language of section

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<sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.<sup>2</sup>

15. According to findings by the 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. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.<sup>3</sup>

16. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and 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.<sup>4</sup> 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.”<sup>5</sup>

17. A single call using both a prerecorded voice and an autodialer constitutes two violations of the TCPA, even if both violations arose from the

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<sup>2</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

<sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

<sup>4</sup> *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (“FCC Declaratory Ruling”), 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

<sup>5</sup> *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (¶ 10).

same call. *See Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101 (11th Cir. 2015).

## **FACTUAL ALLEGATIONS**

### **Plaintiff Matthew Grogan**

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

19. On or around December 10, 2017, Plaintiff Grogan began receiving numerous autodialed and pre-recorded calls on his cellular phone from Aaron’s. When Plaintiff Grogan did not pick up the phone, Aaron’s left a prerecorded voicemail informing him that it was Aaron’s corporate office calling, and that Plaintiff Grogan should call Aaron’s back at 844-677-9518. There were at least two numbers that appeared in Plaintiff Grogan’s caller ID for these calls: 844-677-9515 and 770-802-2195. Although the last of these numbers appears now to be out of service, the first two currently appear to be associated with Aaron’s.

20. Plaintiff Grogan requested that the calls stop many times. Plaintiff Grogan called Aaron’s specifically on or around December 18, 2017, to request that the calls cease. Aaron’s continued to call his cellular phone anyway.

### **Plaintiff LaTia Bryant**

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

22. On or around September 2018, Plaintiff Bryant began receiving numerous autodialed and pre-recorded calls on her cellular phone from Aaron’s, on at least the following dates:

- September 25, 2018
- October 1, 2018
- October 3, 2018
- October 5, 2018
- October 8, 2018
- October 10, 2018
- October 12, 2018

23. On each occurrence mentioned above, Aaron's left a prerecorded voicemail message.

24. Plaintiff Bryant is not, and has never been, a customer of Aaron's, and has no commercial relationship with Aaron's of any kind.

**Plaintiff Chad Severson**

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

26. On or around April 2019, Plaintiff Severson began receiving numerous autodialed and pre-recorded calls on his cellular phone from Aaron's, on at least the following dates:

- April 11, 2019
- April 12, 2019
- April 15, 2019
- April 16, 2019
- April 17, 2019
- April 18, 2019
- April 19, 2019
- April 22, 2019

- April 23, 2019
- May 6, 2019
- May 22, 2019

27. On each occurrence mentioned above, Aaron's left a prerecorded voicemail message.

28. Plaintiff Severson is not, and has never been, a customer of Aaron's, and has no commercial relationship with Aaron's of any kind.

**Plaintiff Serge Belozarov**

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

30. On or around April 2019, Plaintiff Belozarov began receiving numerous autodialed and pre-recorded calls on his cellular phone from Aaron's. In a three week period from later April to early May 2019, Plaintiff Belozarov received eighteen calls from Aaron's, each leaving an identical voice mail.

31. Plaintiff Belozarov is not, and has never been, a customer of Aaron's, and has no commercial relationship with Aaron's of any kind.

**All Plaintiffs and the Class**

32. Aaron's is, and at all times mentioned herein was a "person", as defined by 47 U.S.C. § 153(39).

33. In receiving unwanted and unsolicited calls on his cellular telephone, Plaintiff suffered concrete harm in the form of lost time spent fielding the unwanted calls and attempting to get Aaron's to stop the calls, loss of use of his cellular telephone as the calls came in, and the invasion of his privacy and intrusion upon his seclusion.

34. Aaron's routinely utilizes the Genesys Interaction Dialer as part of its call campaigns. The Genesys manual describes the Interaction Dialer as "a set of client/server extensions that add automated calling, predictive dialing, and campaign management features to the Customer Interaction Center (CIC) platform." In addition, Genesys describes its system as "designed to provide an efficient automated dialing system."

35. On information and believe, in light of Aaron's routine use of this system, Plaintiffs believe that all calls made to Plaintiffs, as well as all calls to members of the Class, were made via Aaron's Genesys Interactive Dialer.

36. On information and belief, the Genesys Interaction Dialer is an "automatic telephone dialing system," as defined by 47 U.S.C. § 227(a)(1). In addition, Aaron's used "an artificial or prerecorded voice" as described in 47 U.S.C. § 227(b)(1)(A), to make calls to Plaintiffs.

37. The telephone numbers on which Aaron's used to contact Plaintiffs were an "artificial or prerecorded voice" made by an "automatic telephone dialing system," and were assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

38. Plaintiffs did not provide their "prior express consent" allowing Aaron's to place telephone calls to Plaintiff's cellular phone utilizing an "artificial or prerecorded voice" and placed by an "automatic dialing system" within the meaning of 47 U.S.C. § 227(b)(1)(A). In fact, Plaintiffs were never customers of Aaron's, nor had he ever had any dealings with Aaron's whatsoever before Aaron's began calling him.

39. On information and belief, the calls made by Aaron's to Plaintiffs and Class Members were "wrong number" calls—calls made by Aaron's



for purposes of getting in touch with Aaron's customers, but were directed to a wrong party.

40. Telephone calls made to Plaintiffs' cellular phones by Aaron's were not "for emergency purposes" as described in 47 U.S.C. § 227(b)(1)(A).

41. Telephone calls to Plaintiffs' cellular phones made by Aaron's utilized an "artificial or prerecorded voice" and an "automatic telephone dialing system" for non-emergency purposes and in the absence of Plaintiffs' prior express consent violated 47 U.S.C. § 227(b)(1)(A).

42. Under the TCPA and pursuant to the FCC's January 2008 Declaratory Ruling, the burden is on Aaron's to demonstrate that Plaintiffs provided it with prior express consent within the meaning of the statute.<sup>6</sup>

### **CLASS ACTION ALLEGATIONS**

43. Plaintiffs bring this action on behalf of themselves and behalf of all other persons similarly situated (hereinafter referred to as "the Class").

44. Plaintiff proposes the following Class definition, subject to amendment as appropriate:

All persons in the United States (1) who were the subscribers or customary users of a telephone number that was Called by Defendant; (2) with the Genesys Interactive Intelligence System and/or an artificial or prerecorded voice; (3) from June 8, 2014 through the date the Court grants preliminary approval of the Settlement; (4) where that telephone number has been associated with a wrap-up code of "wrong party" at any time in Defendant's records..

Collectively, all these persons will be referred to as "Class members." Plaintiffs

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<sup>6</sup> See *FCC Declaratory Ruling*, 23 F.C.C.R. at 565 (¶ 10).

represent, and are members of, the Class. Excluded from the Class are Aaron's and any entities in which Aaron's has a controlling interest, Aaron's agents and employees, any Judge to whom this action is assigned and any member of such Judge's staff and immediate family, and claims for personal injury, wrongful death and/or emotional distress.

45. Plaintiffs do not know the exact number of members in the Class, but on information and belief, the number of Class members at minimum 297,012.

46. Plaintiffs and all members of the Class have been harmed by the acts of Aaron's, including, but not limited to, the invasion of their privacy, annoyance, waste of time, depletion of their cellular phone battery, and the intrusion on their cellular telephone that occupied it from receiving legitimate communications.

47. This Class Action Complaint seeks injunctive relief and money damages.

48. The joinder of all Class members is impracticable due to the size and relatively modest value of each individual claim. The disposition of claims in a class action will provide substantial benefit to the parties and the judicial economy of the Court in avoiding a multiplicity of identical suits. The Class can be identified easily through records maintained by Aaron's.

49. There are well defined, nearly identical, questions of law and fact affecting all Class members. The questions of law and fact involving the Class claims predominate over questions which may affect individual Class

members. Those common questions of law and fact include, but are not limited to, the following:

- a. Whether non-emergency calls made to Plaintiff and Class members' cellular telephones used an automatic telephone dialing system and/or an artificial or prerecorded voice;
- b. Whether such calls were made by Aaron's;
- c. Whether Aaron's can meet its burden of showing it obtained prior express consent (*i.e.*, consent that is clearly and unmistakably stated), during the transaction that resulted in the debt owed, to make such calls;
- d. Whether Aaron's conduct was knowing and/or willful;
- e. Whether Aaron's is liable for damages, and the amount of such damages; and
- f. Whether Aaron's should be enjoined from engaging in such conduct in the future.

50. As persons who received numerous and repeated telephone calls using an automatic telephone dialing system and an artificial or prerecorded voice, without their prior express consent within the meaning of the TCPA and Rules, Plaintiffs assert claims that are typical of each Class member. Plaintiffs will fairly and adequately represent and protect the interests of the Class, and has no interests which are antagonistic to any member of the Class.

51. Plaintiffs have retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes, including claims under the TCPA.

52. A class action is the superior method for the fair and efficient adjudication of this controversy. Classwide relief is essential to compel Aaron's to comply with the TCPA. The interest of Class members in individually controlling

the prosecution of separate claims against Aaron's is small because the statutory damages in an individual action for the violation of the TCPA are 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 prerecorded the Class members did not provide prior express consent required under the statute to authorize such calls to their cellular telephones.

53. Aaron's has acted on grounds applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and belief, Plaintiffs allege 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.***

54. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully stated herein.

55. The foregoing acts and omissions of Aaron's constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

56. As a result of Aaron's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiffs and each member of the Class are entitled to treble damages of up to \$1,500.00 for each and every violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

57. Plaintiffs and all Class members are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by Defendants in the future. Plaintiffs and Class members are also entitled to an award of attorneys' fees and costs.

## **SECOND COUNT**

### **STATUTORY VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT 47 U.S.C. § 227 *ET SEQ.***

58. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

59. The foregoing acts and omissions of Aaron's constitutes numerous and multiple violations of the TCPA, including but not limited to each of the above cited provisions of 47 U.S.C. § 227 *et seq.*

60. As a result of Aaron's violations of 47 U.S.C. § 227 *et seq.*, Plaintiffs and Class members are entitled to an award of \$500.00 in statutory damages for each and every violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

61. Plaintiffs and Class members are also entitled to and do seek injunctive relief prohibiting Aaron's violation of the TCPA in the future.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that the Court grant Plaintiffs and all Class members the following relief against Aaron's:

- A. Injunctive relief prohibiting such violations of the TCPA by Aaron's in the future;
- B. As a result of Aaron's willful and/or knowing violations of 47 U.S.C.

§ 227(b)(1), Plaintiffs seek for themselves and each Class member treble damages, as provided by statute, of up to \$1,500.00 for each and every violation of the TCPA;

C. As a result of Aaron's violations of 47 U.S.C. § 227(b)(1), Plaintiffs seek for themselves and each Class member \$500.00 in statutory damages for each and every violation of the TCPA;

D. An award of attorneys' fees and costs to counsel for Plaintiffs and the Class;

E. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class, finding that Plaintiffs are proper representatives of the Class, and appointing the lawyers and law firms representing Plaintiffs as counsel for the Class;

F. Such other relief as the Court deems just and proper.

Dated: April 29, 2020

By: /s/ Michael J. Boyle, Jr.  
Michael J. Boyle, Jr.

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## DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all counts so triable.

Dated: April 29, 2020

By: /s/ Michael J. Boyle, Jr.  
Michael J. Boyle, Jr.

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**CERTIFICATION UNDER L.R. 7.1D.**

Pursuant to Northern District of Georgia Civil Local Rule 7.1D, the undersigned counsel certifies that this FIRST AMENDED CLASS ACTION COMPLAINT is a computer document and was prepared in Times New Roman 14 point font, as mandated in Local Rule 5.1C.

This 29th day of April, 2020.

/s/ Michael J. Boyle, Jr.  
Michael J. Boyle, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on this day, April 29, 2020, I caused the foregoing FIRST AMENDED CLASS ACTION COMPLAINT to be electronically filed with the Clerk of the Court using the CM/ECF system, which will automatically send notification of such filing to all attorneys of record.

/s/ Michael J. Boyle, Jr.

