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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE WESTERN DISTRICT OF WASHINGTON**
10 **IN SEATTLE**

11 **KELLY USANOVIC**, individually, and on
12 behalf of all others similarly situated,

13 *Plaintiff,*

14 v.

15 **EXP REALTY, LLC**, a Washington limited
16 liability company,

17 *Defendant.*

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

18 **CLASS ACTION COMPLAINT**

19 Plaintiff Kelly Usanovic (“Usanovic” or “Plaintiff Usanovic”) brings this Class Action
20 Complaint and Demand for Jury Trial against Defendant eXp Realty, LLC (“eXp” or
21 “Defendant”) to stop eXp from violating the Telephone Consumer Protection Act (“TCPA”) by
22 directing its agents to make unsolicited calls to consumers who are registered on the national Do
23 Not Call registry (“DNC”) and to otherwise obtain injunctive and monetary relief for all persons
24 injured by eXp’s conduct. Plaintiff, for this Complaint, alleges as follows upon personal

1 knowledge as to herself and her own acts and experiences, and, as to all other matters, upon
2 information and belief, including an investigation conducted by her attorneys.

3 INTRODUCTION

4 1. eXp is a real estate brokerage.

5 2. eXp Realty advertises itself as an innovative real estate brokerage that is cloud
6 based, and provides powerful technologies such as lead generation tools to promote their
7 business.¹ In addition, eXp provides ongoing training and support to its agents on how to
8 generate business in real estate, including through cold calling those consumers with expired real
9 estate listings.

10 3. In Plaintiff Usanovic's case, she received at least 13 unsolicited cold calls from at
11 least 4 different eXp agents.

12 4. In response to this, Plaintiff is filing this lawsuit seeking injunctive relief,
13 requiring Defendant to cease directing its agents to violate the TCPA by placing unsolicited calls
14 to consumers' telephone numbers who are registered on the DNC, including those consumers
15 who requested for the calls to stop, as well as an award of statutory damages to the members of
16 the Class and costs.

17 PARTIES

18 5. Plaintiff Usanovic is a resident of Las Vegas, Nevada.

19 6. Defendant eXp is a Washington limited liability company with its office address
20 in Bellingham, Washington. eXp conducts business from this District, the State of Washington,
21 and throughout the United States.

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¹ <https://life.exprealty.com/why-exp-better-than-independent-brokerages/>

JURISDICTION AND VENUE

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

8. This Court has personal jurisdiction over Defendant under 28 U.S.C. § 1391(b) because Defendant is a Washington company located in this District, and because the wrongful conduct giving rise to this case occurred at least in part in this District.

9. Venue is proper because the Defendant is located in this District.

COMMON ALLEGATIONS

10. eXp provides training to its agents through their training platform, including specific training on how to market their services.

11. One such marketing tactic popular with realtors and promoted by defendant eXp to its agents, is calling expired listings.

12. An expired listing is a term that refers to a property that has been on the market for a specified period without being sold, resulting in the termination of the listing agreement between the consumer and the realtor. Often times, the realtor posted the consumer's property address and photos on the multiple listing service ("MLS") with the realtor's name and phone number only.

13. Because the listing agreement between the consumer and their realtor has expired, some realtors use advanced research techniques to identify the name and phone number associated with the address of the property listing and call the consumer directly in an attempt to have the consumer relist their property with the new agent that is calling them.

14. Many of eXp's agents engage in calling expired listing leads in an attempt to win their business and use this as a main source for their lead generation.

1 15. These eXp agents will call consumers who are registered on the DNC and who
2 have not given eXp or any of its agents consent to call them on their phone number.

3 16. Many times these eXp agents calling expireds, will call consumers' phone number
4 multiple times until the consumer picks up.

5 17. Unfortunately, since this tactic is promoted by Defendant eXp, a consumer may
6 receive multiple calls from multiple eXp agents on the same day or over a period of a few days
7 like the Plaintiff in this case, all trying to solicit the consumer to relist her property with them.

8 18. eXp receives a commission directly from the successful transaction of each of its
9 agents, up to a certain cap amount, including those that generate their business by violating the
10 TCPA.

11 19. The Plaintiff brings this case to prevent consumers who have registered their
12 phone number on the DNC from being bombarded by eXp real estate agents cold calling their
13 phone number in an attempt to solicit business.

14 **PLAINTIFF USANOVIC'S ALLEGATIONS**

15 **eXp Realty Agents Called Plaintiff Usanovic's Cell Phone Number Without Her Consent**

16 20. Plaintiff is the subscriber of a cell phone number ending in 6113.

17 21. Plaintiff Usanovic's cell phone number was registered on the DNC on June 25,
18 2005.

19 22. Plaintiff Usanovic's cell phone number is not associated with a business and she
20 uses it as one would use a home landline phone number.

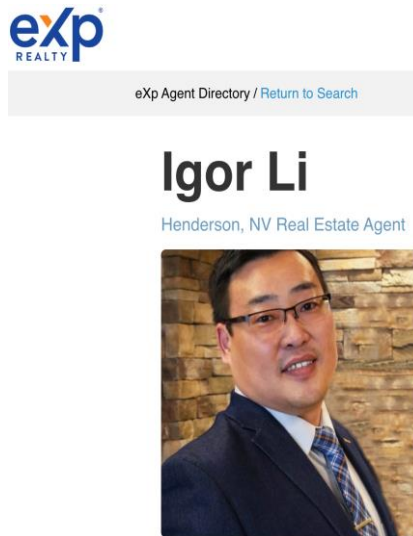
21 23. Plaintiff Usanovic had a property listed for sale on the MLS using a real estate
22 agent that is not affiliated with eXp. Plaintiff has been working with this same real estate agent
23 since 2014 and has had no desire to work with any other realtor.

24 24. Plaintiff Usanovic's MLS property listing expired in February of 2023. As soon

as it expired, Plaintiff received a flood of unsolicited solicitation calls to her cell phone from real estate agents, a significant number of which were from Defendant eXp's agents.

25. On February 14, 2023 at 8:00 AM, Plaintiff Usanovic received an unsolicited call from an eXp agent, from the phone number 725-712-0471. This call was not answered, and no voicemail was left. Plaintiff received 5 more back-to-back calls from 725-712-0471 at 8:01 AM on February 14, 2023. None of these calls were answered.

26. The caller ID displayed the name "Igor Li," who is an eXp real estate agent working in Nevada, as per eXp's website:



27. A few minutes later on February 14, 2023 at 8:11 AM, Plaintiff Usanovic received another unsolicited call from an eXp agent, this time from phone number 702-680-8376. Plaintiff Usanovic answered this call and immediately hung up.

28. The caller display for this call showed "Ali Shahrokhi." Shahrokhi is an eXp real estate agent, as per the eXp website³ and the Nevada real estate licensing website:

² <https://exprealty.com/agents/igor-li-7537d7cf-8047-11ec-bd8e-85678313fa08/>

³ <https://exprealty.com/agents/ali-shahrokhi-73665692-3b5c-11ed-b9ab-05f35644de6a/>

Name		
Name		
ALI SHAHROKHI		

Registration Information		
Credential	License Type	Issue Date
S.0061445.LLC	SALESPERSON	05/14/2004

Associated With:
Supervisor
EXP REALTY LLC 10845 GRIFFITH PEAK DR #2 LAS VEGAS, NV 89135

29. On February 14, 2023 at 8:18 AM, Plaintiff Usanovic received another unsolicited call from an eXp agent displaying the name “Ali Shahrokhi,” this time from phone number 702-714-1974. Plaintiff Usanovic answered this call. The agent introduced himself as Ali Shahrokhi with license number 0061445, which matches the screenshot shown above. Shahrokhi identified himself as an eXp Realty agent. He called because Plaintiff’s property listing had expired and he wanted to see if he could represent her to list her home. Plaintiff Usanovic told Shahrokhi that her number is on the DNC list and to stop calling her.

30. The phone number 702-714-1974 is associated with Ali Shahrokhi’s agent listing on the Zillow website.

Cell phone:	<u>(702) 714-1974</u>
Screename:	ShahrokhiGRP
Member since:	04/28/2015
Real Estate Licenses:	Not provided

31. Despite her clear stop request, Plaintiff Usanovic received another unsolicited call to her cell phone from an eXp agent on February 14, 2023 at 6:39 PM, from phone number 702-861-6202. Plaintiff answered this call. This call was from an agent named Carlos Mezquitan,

⁴ <https://red.prod.secure.nv.gov/Lookup/LicenseLookup.aspx>

⁵ <https://www.zillow.com/profile/ShahrokhiGRP>

1 who called because Plaintiff's property listing had expired and he wanted to represent her to
 2 relist her home. Mezquitan stated that he works for eXp Realty. Plaintiff told Mezquitan that her
 3 number is on the DNC list and told him to stop calling.

4 32. Carlos Mezquitan is the owner of the phone number 702-861-6202 and is an eXp
 5 agent, as per eXp's website:

Carlos Mezquitan

Las Vegas, NV Real Estate Agent



Join eXp Realty

Contact Info

(702) 861-6202
 carlos.mezquitan@exprealty.com
 carlosmezquitan.exprealty.com

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15 33. Despite 2 clear stop requests, Plaintiff Usanovic received 2 additional unsolicited
 16 calls to her cell phone from an eXp agent on February 17, 2023, from the phone number 702-
 17 460-9741 at 10:25 AM and then again at 11:00 AM from the same phone number. Neither of
 18 these calls were answered. The caller display showed the name John Crose.

19 34. Plaintiff then received an additional 2 more calls from 702-460-9741 on February
 20 17, 2023 at 11:01 AM and 12:42 PM to her Google Voice phone number. Plaintiff answered
 21 these calls and hung up right away without speaking.

22 35. John Crose is the owner of the phone number 704-460-9741 and he works for
 23

24 ⁶ <https://exprealty.com/agents/carlos-mezquitan-3b8b40ac-5db8-11ec-a22c-0790144d364e/>

Defendant eXp, as per the eXp website:

John Crose II

Las Vegas, NV Real Estate Agent



Join eXp Realty

Contact Info

(702) 460-9741

john.crose@exprealty.com

John is a State Licensed Broker/Salesperson and has been practicing Real Estate in Las Vegas and the surrounding areas for the past decade. A Native of the Las Vegas Valley he graduated from Chaparral High School in the mid 1990's and then enlisted in the US NAVY. During his four year enlistment his time was served onboard USS PORTSMOUTH (SSN 707) a nuclear-powered submarine. During his time, PORTSMOUTH deployed twice to the Western Pacific acting as a forward deterrent for national security in the National Theatre. In addition to his Submarine Service, John qualified as a U.S. NAVY DIVER and completed hundreds of high security dives ensuring the safety of his crew before and after every time at sea. After completing his time in the NAVY, John earned a bachelor's degree in business and was involved in the Hotel and Tourism industry for 17 years. During this time John developed unparalleled customer service skills and a strong belief in helping clients and colleagues through his relentless customer service which is portrayed in all his successfully closed transactions. His expert knowledge of the Las Vegas Market and creative attributes in helping homeowners sell their homes in a timely manner is unsurpassed. John thoughtfully anticipates throughout each transaction and lists and sells property at the highest-level putting the most amount of money in his client's pockets. John has experienced ten years in an ever-changing Las Vegas Market which has built him a strong reputation among clients and peers. John's expert negotiation skills, easy accessibility and accountability to clients, past, present and future have earned him multiple accolades and a defined position among some of the best Las Vegas Realtors.

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36. The Plaintiff has never done business with eXp or any of its agents, nor has she ever requested that eXp agents call her or consent to any contact from Defendant.

37. The unauthorized solicitation calls that Plaintiff received from eXp, as alleged herein, have harmed Plaintiff Usanovic in the form of mental distress, annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of her phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone.

38. Seeking redress for these injuries, Plaintiff Usanovic, on behalf of herself and a Class of similarly situated individuals, brings suit under the TCPA.

CLASS ALLEGATIONS

Class Treatment Is Appropriate for Plaintiff's TCPA Claim Arising From Multiple Calls Made by eXp Agents to Her Phone Number Registered on the DNC

⁷ <https://exprealty.com/agents/john-crose-ii-d8e649b9-b9ea-11ed-9489-39993775cb84/>

39. Plaintiff Usanovic brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of themselves and all others similarly situated and seek certification of the following Class:

Do Not Call Registry Class: All persons in the United States who from four years prior to the filing of this action through class certification (1) one or more eXp real estate agents called more than one time in the aggregate, (2) within any 12-month period, (3) where the person's residential telephone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same reason eXp's real estate agents called Plaintiff.

40. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the Class definitions following appropriate discovery.

41. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

42. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff's and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

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

(b) Whether the Defendant is vicariously liable for the actions of its agents;

(c) Whether Defendant and its agents placed multiple calls within a 12-month period to Plaintiff and other consumers whose telephone numbers were registered with the DNC for at least 30 days of the time of each call; and

(d) whether members of the Class are entitled to treble damages based on the wilfulness of Defendant's conduct.

43. **Adequate Representation:** Plaintiff Usanovic will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff Usanovic has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff Usanovic and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff Usanovic nor her counsel have any interest adverse to the Class.

44. **Appropriateness:** This class action is also appropriate for certification because Defendant acted or refused to act on grounds generally applicable to the Class and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as wholes, not on facts or law applicable only to Plaintiff Usanovic.

45. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendant's misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CAUSE OF ACTION

**Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)
(On Behalf of Plaintiff and the Do Not Registry Class)**

46. Plaintiff Usanovic repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

47. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered her or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

48. Any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

49. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

50. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call Registry Class received more than one telephone call in a 12-month period made by or on behalf of the Defendant in violation of 47 C.F.R. § 64.1200, as described above.

51. As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled, inter

1 alia, to receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

2 52. To the extent Defendant's misconduct is determined to be wilful and knowing, the
3 Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages
4 recoverable by the members of the Do Not Call Registry Class.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, pray for the following
7 relief:

- 8 a) An order certifying the Class as defined above; appointing Plaintiff as the representative
9 of the Class; and appointing her attorneys as Class Counsel;
- 10 b) An award of actual and/or statutory damages to be paid into a common fund for the
11 benefit of the Plaintiff and the Class;
- 12 c) An order declaring that Defendant's actions, as set out above, violate the TCPA;
- 13 d) An order requiring Defendant to disgorge any ill-gotten funds acquired as a result of their
14 unlawful telephone calling practices;
- 15 e) An injunction requiring Defendant to cease all unsolicited calling activity, and to
16 otherwise protect the interests of the Class; and
- 17 f) Such further and other relief as the Court deems just and proper.

18 **JURY DEMAND**

19 Plaintiff requests a jury trial.

20 Respectfully Submitted,

21 **KELLY USANOVIC**, individually and on behalf
22 of those similarly situated individuals

23 Dated: May 10, 2023

24 By: /s/ Eric R. Draluck
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WSBA No. 19881

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**Pro Hac Vice motion forthcoming*