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Counsel for Plaintiff and the proposed class

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Natasha Hiller, *on behalf of herself and others*
similarly situated,

Plaintiff,

v.

The Money Source Inc.,

Defendant.

Case No.: _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

Nature of this Action

1. Natasha Hiller (“Plaintiff”) brings this class action against The Money Source Inc. (“Defendant” or “TMS”) under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

2. Upon information and good faith belief, Defendant routinely violates 47 U.S.C. § 227(b)(1)(A)(iii) by using an artificial or prerecorded voice in connection with non-emergency calls it places to telephone numbers assigned to a cellular telephone service, without prior express

1 consent.

2 3. More specifically, upon information and good faith belief, Defendant has an
3 erroneous TCPA policy that it uniformly applies to its calling practices that results in unwanted
4 artificial or prerecorded voice calls it places to telephone numbers assigned to a cellular telephone
5 service.
6

7 4. Defendant's erroneous TCPA policy provides that Defendant will only honor a
8 consumer's do-not-call request if Defendant receives a written cease and desist letter from that
9 consumer.
10

11 5. Defendant will record verbal do-not-call requests it receives from consumers in its
12 records but will not honor such requests unless Defendant receives a written request.

13 6. This policy results in violations of the TCPA because "consumers may revoke
14 consent in any manner that clearly expresses a desire not to receive further messages, and . . .
15 callers may not infringe on that ability by designating an exclusive means to revoke." *In re Rules*
16 *& Regulations Implementing the TCP Act of 1991 et al.*, 30 FCC Rcd 7961, 7996 (F.C.C. July 10,
17 2015).
18

19 **Jurisdiction and Venue**

20 7. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C.
21 § 1331.
22

23 8. This Court has jurisdiction over Defendant because Defendant conducts business
24 transactions in this district, is located in this district, and has committed tortious acts in this district.

25 9. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as a substantial
26 portion of the events giving rise to this action occurred in this district and Defendant resides in this
27 district.
28

1 10. For example, Defendant directed artificial or prerecorded voice messages to
2 Plaintiff's cellular telephone from this district.

3
4 **Parties**

5 11. Plaintiff is a natural person who at all relevant times resided in Cornelius, Oregon.

6 12. Plaintiff is, and at all relevant times was, a "person" as defined by 47 U.S.C. §
7 153(39).

8 13. Defendant is a corporation organized under the laws of the State of Delaware, with
9 global headquarters located at 3138 E. Elwood Street, Phoenix, Arizona 85034.

10 14. Defendant is, and at all relevant times was, a "person" as defined by 47 U.S.C. §
11 153(39).
12

13 **Factual Allegations**

14 15. Plaintiff is, and has been for the relevant time period, the subscriber to her cellular
15 telephone number—(XXX) XXX-2225.

16 16. In or around April 2022, Defendant began placing calls to telephone number (XXX)
17 XXX-2225, intending to reach Plaintiff.
18

19 17. For example, Defendant placed calls to telephone number (XXX) XXX-2225 on at
20 least the following dates: April 14, 2022, July 13, 2022, August 15, 2022, August 17, 2022,
21 September 13, 2022, September 15, 2022, September 17, 2022, September 19, 2022, October 10,
22 2022 October 12, 2022, October 19, 2022, October 20, 2022, October 28, 2022, November 8, 2022,
23 November 21, 2022, November 25, 2022, December 20, 2022, and January 12, 2023.
24

25 18. Defendant's records will show all of the calls it made to Plaintiff at telephone
26 number (XXX) XXX-2225.
27
28

1 19. Defendant used an artificial or prerecorded voice in connection with many of the
2 calls it placed to telephone number (XXX) XXX-2225.

3 20. For example, on December 20, 2022, Defendant delivered to telephone number
4 (XXX) XXX-2225, from telephone number (866) 867-0330, an artificial or prerecorded voice
5 message that states:
6

7 Hello. The following is an important message from Jeff with The
8 Money Source, your mortgage servicer. It is very important that you
9 return our call as soon as possible we can be reached at 866-867-
10 0330 Monday through Friday 8AM to 9PM eastern time. Again,
11 this is an important message from The Money Source, your
mortgage servicer. Please contact us at 866-867-0330. We look
forward to speaking with you have a great day. Thank you.

12 21. On a number of occasions, Plaintiff contacted Defendant and requested that
13 Defendant cease calling her with prerecorded or artificial voice messages.

14 22. Defendant's representatives informed Plaintiff that it was Defendant's policy to
15 only honor a consumer's do-not-call request if Defendant receives a written cease and desist letter
16 from that consumer.

17 23. Defendant's representatives' informed Plaintiff that Defendant would record her
18 verbal request in its records but would take no action unless and until Defendant received a written
19 cease and desist letter.
20

21 24. Plaintiff explained to Defendant's representatives that the TCPA required them to
22 honor a verbal do-not-call request.
23

24 25. Plaintiff knew that the TCPA required them to honor a verbal do-not-call request
25 because Plaintiff works in financial services and was provided with TCPA training by her
26 employer.
27
28

1 26. On numerous occasions, Plaintiff asked Defendant's representatives if they had
2 knowledge of or were trained with respect to the TCPA.

3 27. On numerous occasions, Defendant's representatives informed Plaintiff that the
4 representatives did not know what the TCPA was.

5 28. Despite Plaintiff's numerous instructions to stop calling her with an artificial or
6 prerecorded message, Defendant continued to place calls, in connection with which it used an
7 artificial or prerecorded voice, to telephone number (XXX) XXX-2225.
8

9 29. Defendant placed numerous calls to telephone number (XXX) XXX-2225 after
10 Plaintiff requested that the calls stop.

11 30. Defendant delivered, or attempted to deliver, numerous artificial or prerecorded
12 voice messages to telephone number (XXX) XXX-2225 after Plaintiff requested that the calls stop.
13

14 31. Defendant placed the subject calls to telephone number (XXX) XXX-2225 for non-
15 emergency purposes.

16 32. Defendant placed the subject calls to telephone number (XXX) XXX-2225
17 voluntarily.
18

19 33. Defendant placed the subject calls to telephone number (XXX) XXX-2225 under
20 its own free will.

21 34. Defendant had knowledge that it was using an artificial or prerecorded voice in
22 connection with the subject calls it placed to telephone number telephone number (XXX) XXX-
23 2225.
24

25 35. Plaintiff suffered actual harm as a result of Defendant's subject calls in connection
26 with which it used an artificial or prerecorded voice message, in that she suffered an invasion of
27 privacy, an intrusion into her life, and a private nuisance.
28

1 to objective criteria.

2 44. In addition, the members of the class are identifiable in that, upon information and
3 belief, their telephone numbers, names, and addresses can be identified in business records
4 maintained by Defendant and by third parties.
5

6 45. Plaintiff's claims are typical of the claims of the members of the class.

7 46. As it did for all members of the class, Defendant placed calls to Plaintiff's cellular
8 telephone number in connection with which it used an artificial or prerecorded voice after Plaintiff
9 requested that Defendant cease doing so.
10

11 47. Plaintiff's claims, and the claims of the members of the class, originate from the
12 same conduct, practice, and procedure on the part of Defendant, namely Defendant's erroneous
13 TCPA policy that only honored written do-not-call requests.

14 48. Plaintiff's claims are based on the same theories as the claims of the members of
15 the class.
16

17 49. Plaintiff suffered the same injuries as the members of the class.

18 50. Plaintiff is an adequate representative of the class because she will fairly and
19 adequately protect the interests of the members of the class.

20 51. Plaintiff's interests in this matter are not directly or irrevocably antagonistic to the
21 interests of the members of the class.
22

23 52. Plaintiff will vigorously pursue the claims of the members of the class.

24 53. Plaintiff has retained counsel experienced and competent in class action litigation.

25 54. Plaintiff's counsel will vigorously pursue this matter.

26 55. Plaintiff's counsel will assert, protect, and otherwise represent the members of the
27 class.
28

1 56. The questions of law and fact common to the members of the class predominate
2 over questions that may affect individual members of the class.

3 57. Questions of law and fact common to all members of the class are:

- 4 a. Whether Defendant violated the TCPA;
- 5 b. Whether Defendant's conduct, pattern, and practice as it pertains to documenting
- 6 but not honoring verbal do-not-call requests violated the TCPA;
- 7 c. Whether Defendant's conduct, pattern, and practice as it pertains to placing calls
- 8 with an artificial or prerecorded voice to cellular telephone numbers violate the
- 9 TCPA after the called party verbally revoked consent;
- 10 d. Whether Defendant's use of an artificial or prerecorded voice violated the TCPA;
- 11 and,
- 12 e. The availability of statutory penalties.
- 13
- 14

15 58. A class action is superior to all other available methods for the fair and efficient
16 adjudication of this matter.

17 59. If brought and prosecuted individually, the claims of the members of the class
18 would require proof of the same material and substantive facts.

19 60. The pursuit of separate actions by individual members of the class would, as a
20 practical matter, create a risk of being dispositive of the interests of other members of the class,
21 and could substantially impair or impede their ability to protect their interests.

22 61. The pursuit of separate actions by individual members of the class could create a
23 risk of inconsistent or varying adjudications, which might establish incompatible standards of
24 conduct for Defendant.

25

26

27

28

1 62. These varying adjudications and incompatible standards of conduct, in connection
2 with presentation of the same essential facts, proof, and legal theories, could also create and allow
3 the existence of inconsistent and incompatible rights within the class.
4

5 63. The damages suffered by individual members of the class may be relatively small,
6 thus, the expense and burden to litigate each of their claims individually make it difficult for the
7 members of the class to redress the wrongs done to them.

8 64. The pursuit of Plaintiff's claims, and the claims of the members of the class, in one
9 forum will achieve efficiency and promote judicial economy.
10

11 65. The conduct of this action as a class action presents far fewer management
12 difficulties, conserves judicial resources and the parties' resources, and protects the rights of each
13 class member.

14 66. Defendant has acted or refused to act on grounds generally applicable to the
15 members of the class, making final declaratory or injunctive relief appropriate.
16

17 **Count I**
18 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

19 67. Plaintiff repeats and re-alleges each and every factual allegation contained in
20 paragraphs 1-66.

21 68. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by using an artificial or
22 prerecorded voice in connection with calls it placed to Plaintiff's cellular telephone number and
23 the cellular telephone numbers of the members of the class, without consent.
24

25 69. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff and
26 the members of the class were damaged and are entitled to damages in an amount to be proven at
27 trial.
28

Prayer for Relief

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Certification of the proposed class;
- b) Designating Plaintiff as a representative of the class under Federal Rule of Civil Procedure 23;
- c) Designating Plaintiff's counsel as counsel for the class under Federal Rule of Civil Procedure 23;
- d) Adjudging and declaring that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii);
- e) Enjoining Defendant from continuing its violative behavior, including continuing to place calls to Plaintiff's cellular telephone number, and to the cellular telephone numbers of members of the class, in connection with which it uses an artificial or prerecorded voice;
- f) Awarding Plaintiff and the members of the class damages under 47 U.S.C. § 227(b)(3)(B);
- g) Awarding Plaintiff and the members of the class treble damages under 47 U.S.C. § 227(b)(3);
- h) Awarding Plaintiff and the class reasonable attorneys' fees, costs, and expenses under Rule 23 of the Federal Rules of Civil Procedure;
- i) Awarding Plaintiff and the members of the class any pre-judgment and post-judgment interest as may be allowed under the law; and,
- j) Awarding such other and further relief as the Court may deem just and proper.

Demand for Jury Trial

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any and all triable issues.

Dated: February 5, 2023

/s/ Max S. Morgan

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Max S. Morgan, Esquire*

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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s): Natasha Hiller

Defendant(s): The Money Source Inc.

County of Residence: Outside the State of Arizona

County of Residence: Maricopa

County Where Claim For Relief Arose: Maricopa

Plaintiff's Atty(s):

Defendant's Atty(s):

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Southlake, Texas 76092**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

III. Citizenship of Principal

Parties (Diversity Cases Only)

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

485 Telephone Consumer Protection Act

VI.Cause of Action:

Telephone Consumer Protection Act, 47 USC 227

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

VIII. This case is not related to another case.

Signature: /s Max S. Morgan

Date: 2/5/2023

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.