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US DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO, FLORIDA

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

ERLINDA KELLS,

Plaintiff,

-VS-

SCHOOL BOARD OF ORANGE COUNTY, FLORIDA,

Defendant.
_____/

CASE NO.: 6:15-cv-791-Orl-22DAB

COMPLAINT AND DEMAND FOR JURY TRIAL

1. Plaintiff alleges violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* ("TCPA").

INTRODUCTION

2. "The TCPA is designed to protect individual consumers from receiving intrusive and unwanted telephone calls." *Mims v. Arrow Fin. Servs., LLC*, –US--, 132 S.Ct. 740, 745, 181 L.Ed.2d 881 (2012).

3. "Senator Hollings, the TCPA's sponsor, described these calls as 'the *1256 scourge of modern civilization, they wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall." 137 Cong. Rec. 30, 821 (1991) Senator Hollings presumably intended to give telephone subscribers another option: telling the autodialers to simply stop calling." *Osario v. State Farm Bank, F.S.B.*, 746 F. 3d 1242 (11th Cir. 2014).

JURISDICTION AND VENUE

4. Jurisdiction and venue for purposes of this action are appropriate and conferred by 28 U.S.C. §1331.

5. The alleged violations described herein occurred in Orange County, Florida. Accordingly, venue is appropriate with this Court under 28 U.S.C. §1391(b)(2), as it is the judicial district in which a substantial part of the events or omissions giving rise to this action occurred.

FACTUAL ALLEGATIONS

6. Plaintiff is a natural person, and citizen of the State of Florida, residing in Palm Bay, Orange County, Florida.

7. Plaintiff is the "called party." See *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 643 (7th Cir. 2012), reh'g denied (May 25, 2012).

8. The School Board of Orange County, Florida operates, controls and supervises the public school system in Orange County, Florida; including but not limited to Walker Middle School.

9. The School Board of Orange County, Florida is vicariously liable for, consents of and has knowledge and control of the activities of their agents and representatives, including supervisors, managers, affiliates, subsidiaries, divisions, employees, servants, partners, agents, vendors, assignees, transferees, collectors and/or contractors; including, but not limited to "Walker Middle School".

10. Plaintiff is the regular user and carrier of the cellular telephone number at issue, (321) 205-3707, and was the called party and recipient of Defendant's hereafter described calls.

11. Defendant intentionally harassed and abused Plaintiff on numerous occasions by contacting Plaintiff on her cellular telephone without Plaintiff's prior consent.

12. Upon information and belief, each call the Defendant made to the Plaintiff was made using an "automatic telephone dialing system" which has the capacity to store or produce telephone numbers to be called, without human intervention, using a random or sequential number generator; and to dial such numbers as specified by 47 U.S.C §227(a)(1).

13. Furthermore, each of the calls at issue were placed by the Defendant using a "prerecorded voice," as specified by the TCPA, 47 U.S.C. § 227(b)(1)(A).

14. Each call the Defendant made to the Plaintiff's aforementioned cellular telephone number was done so without the "express permission" of the Plaintiff.

15. Plaintiff has never provided her cellular telephone number to Defendant.

16. In or about September of 2013, Defendant initiated its campaign of phone calls to the Plaintiff on her aforementioned cellular telephone. Upon receipt of the calls, Plaintiff's caller ID identified that the calls were being initiated from, but not limited to, the following phone numbers: (866) 986-9873 and (407) 858-3210.

17. In or about October of 2013, after receiving approximately 5-6 calls from Defendant with a recorded message regarding a student attending "Walker Middle School," Plaintiff became concerned that the family of said student was not receiving important messages, used a telephone directory to locate the telephone number for Walker Middle School, called (407) 858-3210, and spoke to an employee of Walker Middle School/representative of Defendant, and explained that they were calling the wrong number, they she does not have a student attending school, and to stop calling her aforementioned cellular telephone number. The

employee of Walker Middle School/representative of Defendant apologized to Plaintiff, and told her they would look into having the calls stop.

18. During the aforementioned October of 2013 phone conversation between the Plaintiff and the employee of Walker Middle School/representative of Defendant, in which Plaintiff informed Defendant that they were calling the wrong number, Plaintiff expressly revoked any express consent Defendant mistakenly believed it may have had for placement of telephone calls to Plaintiff's aforementioned cellular telephone number by the use of an automatic telephone dialing system or a pre-recorded or artificial voice.

19. Again, in or about November of 2013, due to the steady influx of calls to her aforementioned cellular telephone from the Defendant, Plaintiff again called Walker Middle School, and spoke to an employee of Walker Middle School/representative of Defendant, and explained that they were calling the wrong number, that she does not have any children attending public school in the county, that she has already informed them of this fact and asked for the calls to stop, and again demanded that Defendant cease placing calls to her aforementioned cellular telephone number. The employee of Walker Middle School/representative of Defendant apologized to Plaintiff, and told her they would "take care of it."

20. Each of Plaintiff's requests of the Defendant demanding an end to the harassment were ignored.

21. Defendant has made approximately one-hundred (100) calls to Plaintiff's aforementioned cellular telephone number, or as will be established after a thorough review of Defendant's records. [Please see attached **Exhibit A,** demonstrating a non-exclusive call log of phone calls from August 01, 2014 through November 6, 2014.]

22. Plaintiff received the following pre-recorded telephone message on her voicemail on October 20, 2014 at 05:53 pm EST:

> Hello, this is a message from the attendance office at Walker Middle calling to inform you that your student Angel was absent today. Please send a signed note to the attendance office when your student returns to school. If you would like to hear this message again, press the star key.

23. Plaintiff received the following pre-recorded telephone message on her voicemail on October 20, 2014 at 05:40 pm EST:

> Good afternoon parents, this is Dr. Valley, your proud principal at Walker Middle School. I just wanted to share with your that today at around 12:15, Walker Middle School and Lancaster Elementary were on a lockdown and that was through the Sherriff's office. There was a burglary in the area, and the person did get caught, however during that time there was a lockdown. It was about a 30 to 40 minute lockdown that we had students remain in their class rooms. No one was allowed to come into the building or exit the building. Um, but everything went very well, I applaud your students for doing the right thing. And so again that happened today this afternoon for about 30 to forty minutes lockdown shortly after 12:15 or so. So thank you so much, and please let your students know that were very very proud of how they handled the lockdown situation today. Have a great afternoon, if you have any questions, please feel free to contact the school.

24. Plaintiff received the following pre-recorded telephone message on her voicemail on October 14, 2014 at 06:40 pm EST:

> Good evening parents. Would you like to explore magnet school programs for your child for the 2015 16 school year? Come to our OCPS district magnet fair on November 63th. Representatives from all our magnet programs will be there to answer your questions. It will be held from 05:30 to 08:00 pm in the Edgewater High school Gymnasium. For more details, see our website at www.schoolchoice.ocps.net. You can press the star key on your key pad to repeat this message. Thank you for listening

25. Plaintiff received the following pre-recorded telephone message on her voicemail on November 6, 2014 at 06:05 pm EST:

> Parents, please join our PTSA in support of our school. Membership dues are only $6.00, or $10.00 for families. If you join by November 21, your child will get front of the line during their lunch time. Thank you for your support.

26. Plaintiff received the following pre-recorded telephone message on her voicemail on November 6, 2014 at 12:19 pm EST:

> Parents, register today for the Orange County Public Schools parent academy on Saturday November 15. It's all about parents, schools and communities working together. Hear from the Florida Department of Education and the University of Central Florida [inaudible] and more. The academy will be held from 09:00 am to 01:00 pm at the Southwest Middle School in the Doctor Phillips area. It's free, lunch is provided, and you can register today at www.parentacademy.cops.net, or call the parent academy at (407) 317-3300. That's (407) 317-3300. You can press the star key on your telephone to repeat this message

27. Plaintiff received the following pre-recorded telephone message on her voicemail on November 5, 2014 at 03:04 pm EST:

> Good afternoon parents, this is Dr. Arlene Thompson, one of the assistant principals at Walker Middle School. We have extended the fundraising event through tomorrow, Thursday, November the 6th. Please have your children return their fundraising packets to their first period teacher in the morning. Thank you so very much for being a part of the Walker family.

28. Plaintiff received the following pre-recorded telephone message on her voicemail on November 3, 2014 at 04:34 pm EST:

> Good evening. Students in Orange County Public Schools are automatically assigned to a school based on the legal domicile or address of their parents. However, if you wish to explore a school transfer option for the 2015-2016 school year, here is the process: First, make sure your address is correct with your child's current school. Next, view the types of available transfers at www.ocps.net. Under the quick links heading, look for the link that says "Enrollment, Zoning and Transfers." Third, make an appointment with the pupil assignment office. You can make the appointment online at www.pupil.ocps.net. As defined in our school board policy, the window to apply is November 1 2014 through April 15, 2015. You can press the star key on your telephone to repeat this message. Thank you for listening

29. Plaintiff received the following pre-recorded telephone message on her voicemail on November 2, 2014 at 06:06 pm EST:

> Happy Sunday, parents. This is Dr. Valley, your proud principal for Walker Middle School. This is just a reminder that on Friday, October 31, 2014, you should have received your child's report card. IF you have any questions regarding your child's report card, please contact your child's teacher or guidance counselor to schedule a parent teacher conference. Remember, we want all our students to be successful. Tomorrow, Monday, November 3, we will have our first [inaudible] night at Chili's located at 8002 Golden Sky Lane from 05:00 to 09:00 pm. There is a flyer that your child will be bringing home tomorrow that you can take with you, and part of the proceeds will come back to our school. Please remember to follow up with Twitter and Facebook for regular updates regarding our wonderful school. You can also receive our weekly electronic newsletter. If you would like to receive our electronic news letter and have not received one yet, please email us at 31445@ocps.net. That is 31445@ocps.net, and we will add you to our distribution list. Thank you, and continue to enjoy this wonderful day with your family.

30. Plaintiff received the following pre-recorded telephone message on her voicemail on October 30, 2014 at 03:05 pm EST:

> Good afternoon parents. Want to know more about helping your child succeed with digital curriculum? Please look at our online training modules. Current topics include EdMoto, Florida Standards, Graduation, Elementary Curriculum and much more. Go to www.digital.ocps.net. That's www.digital.ocps.net, and on the left navigation bar, select the link on the left for "Parents Support Modules." Most are five minutes or less to meet your busy schedule. We are adding new modules monthly, so we hope you will be a frequent visitor. You can press the star key on your telephone to repeat this message.

31. Despite actual knowledge of their wrongdoing, the Defendant continued the campaign of abuse, calling the Plaintiff despite not having her express permission to call her aforementioned cellular telephone number.

32. Defendant continued to leave voice messages using a pre-recorded or artificial voice message when calling the Plaintiff, despite acknowledging they did not have her express permission to do so.

33. Defendant's corporate policy and procedures are structured as to continue to call individuals like the Plaintiff, despite these individuals revoking any consent the Defendant may have mistakenly believed they had.

34. Defendant's, corporate policy and procedures provided no means for the Plaintiff to have her aforementioned cellular number removed from the call list.

35. Defendant has many similar complaints from consumers across the country, as those alleged in this lawsuit, by Plaintiff.

36. Plaintiff expressly revoked consent to Defendant's placement of telephone calls to Plaintiff's aforementioned cellular telephone by the use of an automatic telephone dialing system or a pre-recorded or artificial voice immediately upon Defendant's placement of the calls.

37. None of Defendant's telephone calls placed to Plaintiff were for "emergency purposes" as specified in 47 U.S.C. §227(b)(1)(A).

38. Defendant violated the TCPA with respect to the Plaintiff.

39. Defendant willfully or knowingly violated the TCPA with respect to the Plaintiff.

COUNT I
(Violation of the TCPA)

40. Plaintiff incorporates Paragraphs one (1) through thirty-nine (39).

41. Defendant caused placement of non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system or prerecorded or artificial voice without Plaintiff's prior express consent in violation of federal law, including 47 U.S.C § 227(b)(1)(A)(iii).

42. Defendant willfully and knowingly caused placement of non-emergency telephone calls to Plaintiff's cellular telephone using an automatic telephone dialing system or prerecorded or artificial voice without Plaintiff's prior express consent in violation of federal law, including 47 U.S.C § 227(b)(1)(A)(iii).

WHEREFORE, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for statutory damages, punitive damages, actual damages and any other such relief the court may deem just and proper.

Respectfully submitted,

/s/ Amanda J. Allen
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