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15 Counsel for Plaintiff and Class Counsel

16 UNITED STATES DISTRICT COURT  
17 FOR THE DISTRICT OF ARIZONA

18 Joanne Knapper, *on behalf of*  
19 *herself and others similarly situated,*

20 Plaintiff,

21 v.

22 Cox Communications, Inc.,

23 Defendant.

)  
) Case No. 2:17-cv-00913-SPL  
)  
) **FIRST AMENDED CLASS ACTION**  
) **COMPLAINT**

24 **Nature of this Action**

25 1. Joanne Knapper (“Plaintiff”) brings this class action against Cox  
26 Communications, Inc. (“Defendant”), under the Telephone Consumer Protection Act  
27 (“TCPA”), 47 U.S.C. § 227.<sup>1</sup>

28 2. Section 227(b)(1)(A)(iii) of the TCPA provides, in pertinent part:

<sup>1</sup> Plaintiff files this amended complaint with the consent of Defendant. *See* LRCiv  
15.1(b).

1 It shall be unlawful for any person within the United States, or any person  
2 outside the United States if the recipient is within the United States—

3 (A) to make any call (other than a call made for emergency purposes or made  
4 with the prior express consent of the called party) using any automatic  
5 telephone dialing system or an artificial or prerecorded voice—

6 \* \* \*

7 (iii) to any telephone number assigned to a paging service, cellular telephone  
8 service, specialized mobile radio service, or other radio common carrier  
9 service, or any service for which the called party is charged for the call,  
10 unless such call is made solely to collect a debt owed to or guaranteed by the  
11 United States.

12 3. Upon information and good faith belief, Defendant routinely violates 47  
13 U.S.C. § 227(b)(1)(A)(iii) by using an automatic telephone dialing system to place non-  
14 emergency calls to numbers assigned to a cellular telephone service, without prior express  
15 consent, in that it places autodialed calls to wrong or reassigned telephone numbers.

#### 16 **Jurisdiction and Venue**

17 4. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and  
18 28 U.S.C. § 1331.

19 5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as Plaintiff  
20 resides in this district, a portion of the events giving rise to this action occurred in this  
21 district, and as Defendant transacts business in this district.

#### 22 **Parties**

23 6. Plaintiff is a natural person who at all relevant times resided in Maricopa,  
24 Arizona.

25 7. Defendant is a company headquartered in Atlanta, Georgia.

#### 26 **Factual Allegations**

27 8. In approximately July 2015, Defendant began placing calls to Plaintiff's  
28 cellular telephone number—(480)-XXX-4074.

9. Defendant placed calls to Plaintiff's cellular telephone number in 2015 and  
2016.

1           10. Defendant's calls were intended for a recipient other than Plaintiff.

2           11. Upon information and good faith belief, and in light of the frequency,  
3 number, nature, and character of the calls at issue, including the use of an artificial or  
4 prerecorded voice, Defendant placed its calls to Plaintiff's cellular telephone number by  
5 using an automatic telephone dialing system.

6           12. Upon information and good faith belief, and in light of the frequency,  
7 number, nature, and character of the calls at issue, including the use of an artificial or  
8 prerecorded voice, Defendant placed its calls to Plaintiff's cellular telephone number by  
9 using "equipment which has the capacity—(1) to store numbers to be called or (2) to  
10 produce numbers to be called, using a random or sequential number generator—and to dial  
11 such numbers automatically (even if the system must be turned on or triggered by a  
12 person)." *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1053 (9th Cir. 2018).

13           13. Defendant used an artificial or prerecorded voice in connection with at least  
14 five voice messages it left on Plaintiff's cellular telephone voice mail service.

15           14. Defendant placed its calls to Plaintiff's cellular telephone number for non-  
16 emergency purposes.

17           15. Defendant placed its calls to Plaintiff's cellular telephone number  
18 voluntarily.

19           16. Defendant placed the calls to Plaintiff's cellular telephone number under its  
20 own free will.

21           17. Defendant had knowledge that it was using an automatic telephone dialing  
22 system or an artificial or prerecorded voice to place its calls to Plaintiff's cellular telephone  
23 number.

24           18. Defendant intended to use an automatic telephone dialing system or an  
25 artificial or prerecorded voice to place its calls to Plaintiff's cellular telephone number.

26           19. Plaintiff is not, nor was, one of Defendant's customers.

27           20. Plaintiff does not, nor did, have a business relationship with Defendant.  
28

1           21. Plaintiff did not give Defendant prior express consent to place calls to her  
2 cellular telephone number by using an automatic telephone dialing system.

3           22. Defendant maintains business records that show calls it placed to Plaintiff's  
4 cellular telephone number.

5           23. Plaintiff suffered actual harm as a result Defendant's calls at issue in that she  
6 suffered an invasion of privacy, an intrusion into her life, and a private nuisance.

7           24. Moreover, Defendant's calls at issue unnecessarily tied up Plaintiff's cellular  
8 telephone line.

9           25. Upon information and good faith belief, Defendant, as a matter of pattern and  
10 practice, uses an automatic telephone dialing system or an artificial or prerecorded voice  
11 to place calls to telephone numbers assigned to a cellular telephone service, absent prior  
12 express consent.

13   **Class Action Allegations**

14           26. Plaintiff brings this action under Federal Rule of Civil Procedure 23, and as  
15 a representative of the following class:

16           (1) all users of or subscribers to cellular telephones throughout the United  
17 States, (2) to whom Cox Communications, Inc. made or initiated at least one  
18 call to a cellular telephone, (3) via an automatic telephone dialing system or  
19 with an artificial or prerecorded voice, (4) from March 28, 2013 through  
20 March 21, 2019, (5) whose cellular telephone number was at any time  
associated with a Neustar score of 01 in Cox Communications, Inc.'s  
available records.

21           27. Excluded from the class are current or former customers of Defendant.

22           28. Also excluded from the class are Defendant's officers and directors,  
23 members of their immediate families and their legal representatives, heirs, successors, or  
24 assigns, and any entity in which Defendant has or had a controlling interest.

25           29. The members of the class are so numerous that joinder of all of them is  
26 impracticable.

27           30. The members of the class are ascertainable because the class is defined by  
28 reference to objective criteria.

1 31. In addition, the members of the class are identifiable in that their cellular  
2 telephone numbers can be identified in business records maintained by Defendant and by  
3 third parties.

4 32. Plaintiff's claims are typical of the claims of the members of the class.

5 33. As it did for all members of the class, Defendant used an automatic telephone  
6 dialing system, and an artificial or prerecorded voice, to place calls to Plaintiff's cellular  
7 telephone number, without prior express consent.

8 34. Plaintiff's claims, and the claims of the members of the class, originate from  
9 the same conduct, practice, and procedure on the part of Defendant.

10 35. Plaintiff's claims are based on the same theories as are the claims of the  
11 members of the class.

12 36. Plaintiff suffered the same injuries as the members of the class.

13 37. Plaintiff will fairly and adequately protect the interests of the members of the  
14 class.

15 38. Plaintiff's interests in this matter are not directly or irrevocably antagonistic  
16 to the interests of the members of the class.

17 39. Plaintiff has, and will continue to, vigorously pursue the claims of the  
18 members of the class.

19 40. Plaintiff has retained counsel experienced and competent in class action  
20 litigation.

21 41. Plaintiff's counsel has, and will continue to, vigorously pursue this matter.

22 42. Plaintiff's counsel will assert, protect, and otherwise represent the members  
23 of the class.

24 43. The questions of law and fact common to the members of the class  
25 predominate over questions that may affect individual members of the class.

26 44. Issues of law and fact common to all members of the class are:

- 27 a. Defendant's conduct, pattern, and practice;  
28 b. Defendant's violations of the TCPA;

- 1 c. Defendant's use of an automatic telephone dialing system as defined by the  
2 TCPA;  
3 d. Defendant's use of an artificial or prerecorded voice; and  
4 e. The availability of statutory penalties.

5 45. A class action is superior to all other available methods for the fair and  
6 efficient adjudication of this matter.

7 46. If brought and prosecuted individually, the claims of the members of the class  
8 would require proof of the same material and substantive facts.

9 47. The pursuit of separate actions by individual members of the class would, as  
10 a practical matter, be dispositive of the interests of other members of the class, and could  
11 substantially impair or impede their ability to protect their interests.

12 48. The pursuit of separate actions by individual members of the class could  
13 create a risk of inconsistent or varying adjudications, which might establish incompatible  
14 standards of conduct for Defendant.

15 49. These varying adjudications and incompatible standards of conduct, in  
16 connection with presentation of the same essential facts, proof, and legal theories, could  
17 also create and allow the existence of inconsistent and incompatible rights within the class.

18 50. The damages suffered by each individual member of the class may be  
19 relatively small, thus, the expense and burden to litigate each of their claims individually  
20 make it difficult for the members of the class to redress the wrongs done to them.

21 51. The pursuit of Plaintiff's claims, and the claims of the members of the class,  
22 in one forum will achieve efficiency and promote judicial economy.

23 52. There will be little difficulty in the management of this action as a class  
24 action.

25 **Count I**

26 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

27 53. Plaintiff repeats and re-alleges each and every factual allegation contained in  
28 paragraphs 1-52.

1 54. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by utilizing an automatic  
2 telephone dialing system and an artificial or prerecorded voice to place calls to Plaintiff's  
3 cellular telephone number, without her consent.

4 55. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A)(iii),  
5 Plaintiff and the members of the class are entitled to damages in an amount to be proven at  
6 trial.

7 **Trial by Jury**

8 56. Plaintiff is entitled to, and demands, a trial by jury.

9  
10 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 11 a) Determining that this action is a proper class action;
- 12 b) Designating Plaintiff as a class representative under Federal Rule of Civil  
13 Procedure 23;
- 14 c) Designating Plaintiff's counsel as class counsel under Federal Rule of Civil  
15 Procedure 23;
- 16 d) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(a)(iii);
- 17 e) Awarding Plaintiff and the class damages under 47 U.S.C. § 227(b)(3)(B);
- 18 f) Awarding Plaintiff and the class treble damages under 47 U.S.C. § 227(b)(3);
- 19 g) Awarding Plaintiff and the class reasonable attorneys' fees, costs, and  
20 expenses under Rule 23 of the Federal Rules of Civil Procedure;
- 21 h) Awarding Plaintiff and the members of the class any pre-judgment and post-  
22 judgment interest as may be allowed under the law; and
- 23 i) Awarding such other and further relief as the Court may deem just and  
24 proper.
- 25  
26  
27  
28

1 Dated: June 19, 2019

Respectfully submitted,

2 /s/ Michael L. Greenwald

3 Michael L. Greenwald (*pro hac vice*)

4 Aaron D. Radbil (*pro hac vice*)

Greenwald Davidson Radbil PLLC

5 *Class Counsel*

6  
7  
8 **CERTIFICATE OF SERVICE**

9 I certify that on June 19, 2019, the foregoing document was filed with the Court  
10 using CM/ECF, which will send notification of such to all counsel of record.

11  
12 /s/ Michael L. Greenwald

13 Michael L. Greenwald