

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

GREGORY GRUGNALE, individually and on )  
behalf of all others similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SPECIALIZED LOAN SERVICING, LLC, )  
 )  
 )  
Defendant. )

Case No. 14-12534

**CLASS ACTION COMPLAINT  
JURY TRIAL DEMANDED**

**I. INTRODUCTION**

1. Plaintiff Gregory Grugnale brings this class action challenging Specialized Loan Servicing, LLC’s (SLS’s) standardized practice of calling cellular telephones using an automatic telephone dialing system (“ATDS”) or a prerecorded voice without obtaining the subscriber’s prior express consent. These calls violate the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (TCPA). Such calls are characterized as “robocalls” for purposes of this Complaint.

2. Part of SLS’s loan servicing business involves making dunning calls to consumers to encourage their payment of outstanding debts. SLS places robocalls to consumers’ cell phones throughout the nation in its collection efforts.

3. SLS makes a significant portion of such robocalls to cell phone subscribers or users like Mr. Grugnale, who have not consented to receiving any type of call from SLS, much less a robocall from a debt collector. There is no legitimate purpose for these calls.

**II. JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331, because this is a civil action arising under the laws of the United States.

5. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. § 227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

6. This Court has personal jurisdiction over SLS because it has the requisite minimum contacts, has purposefully availed itself of the resources and protection of the State of Massachusetts, and is licensed to do business in Massachusetts a debt collector.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(d) because SLS is subject to personal jurisdiction in this District. In addition, Mr. Grugnale and Class members are located in this District.

### **III. PARTIES**

8. Mr. Grugnale is a natural person residing in Groveland, Massachusetts. Mr. Grugnale is the primary user of and the subscriber to the cellular telephone to which SLS placed robocalls and is a member of the class defined herein.

9. Mr. Grugnale is a “person” as defined by 47 U.S.C. § 153(39).

10. SLS is a limited liability company formed in the State of Delaware. SLS is wholly-owned by Specialized Loan Servicing Holdings, LLC, a company whose ultimate parent is Computershare Limited, a publicly traded company on the Australian stock exchange. A third-party residential mortgage servicer, SLS has offices in Colorado, Georgia, and Arizona, and is licensed in all fifty states and the District of Columbia.

11. SLS is a “person” as defined by 47 U.S.C. § 153(39).

### **IV. THE TCPA’S RESTRICTIONS ON ROBOCALLS**

12. It is a violation of the TCPA to call a person’s cellular telephone using an automatic telephone dialing system or prerecorded or artificial voice message. 47 U.S.C. §

227(b)(1)(a)(iii) (2010). The only exceptions to this prohibition are in the case of an emergency or with the prior express consent of the called party.

13. The TCPA places responsibility for violations not only on businesses that place the unlawful calls, but also on businesses on whose behalf the calls are made. 47 U.S.C. § 227 (c)(5) (2010).

14. In recent years, businesses have increasingly looked to technologies through which to place calls in large volume at low cost. Using a predictive dialer, or ATDS, computer software enables the caller to dial a list of telephone numbers and connects answered calls to agents or representatives. Predictive dialers use software algorithms to minimize the time that agents spend waiting between conversations, while minimizing the occurrence of someone answering when no agent is available. This provides savings and efficiency to the caller but annoyance to the user of the cellular phone to which such calls are placed.

15. Unlike calls placed to land lines, calls made to wireless numbers can actually cost the recipients money, because cell phone users must frequently pay their respective wireless service providers either for each call they receive or incur a usage allocation deduction to their calling plan, regardless of whether the call is authorized.

## V. FACTS

### A. SLS Placed Calls To Mr. Grugnale's Cell Phone, And Those Of Class Members, Using An ATDS And/Or A Prerecorded Voice

16. Over the course of an extended period beginning in at least June 2013, SLS and its agents made dunning robocalls to the cell phones of cell phone subscribers nationwide, allegedly because they were debtors or were thought to be debtors subject to SLS's collection efforts.

17. An untold but substantial number of these calls were made to persons who did not

give express consent to receive such calls, and/or did not owe the debt SLS was attempting to collect.

18. According to Mr. Grugnale's phone records and cellular device, a partial list of calls he from received on his cell phone from SLS are as follows:

- 06/12/13 05:40 PM from 800-268-9706
- 08/20/13 10:31 PM from 800-268-9706
- 08/20/13 10:32 PM from 800-268-9706
- 11/20/13 09:21 AM from 800-268-9706
- 12/03/13 02:30 PM from 800-268-9706
- 01/06/14 04:50 PM from 800-268-9706
- 03/19/14 from 800-268-9706
- 04/29/14 09:16 PM from 800-268-9706
- 04/03/14 from 800-268-9706
- 04/16/14 from 800-268-9706
- 5/30/14 from 800-268-9706.

19. The first time Mr. Grugnale received a call from 800-268-9706, he learned that the call was from SLS when he was told that by the representative.

20. Mr. Grugnale's cell phone carrier, Sprint, on information and belief, does not record incoming calls of less than one minute in duration, calls that are picked up and hung up on, and calls that cause the phone to ring, but are not answered. Accordingly, the list of calls above does not represent the total number of times SLS caused his cell phone to ring using an ATDS.

21. Mr. Grugnale estimates that he received approximately thirty such calls from SLS since June 2013, or about two to three calls per month.

22. On some of the calls that Mr. Grugnale answered, he heard prerecorded or artificial voice messages, and on some unanswered calls, Mr. Grugnale received voicemails leaving prerecorded or artificial voice messages.

23. On other calls which Mr. Grugnale answered, there was a period of silence or “dead air” before a live person spoke to him. This is typical of calls initiated using an “automatic telephone dialing system” as defined in 47 U.S.C. § 227(a)(1), meaning that a machine dialed his cell phone and then waited for him to answer before putting a representative on the line.

24. Each time Mr. Grugnale answered a call from SLS, the caller represented that he or she was looking for a different person.

25. Mr. Grugnale repeatedly informed SLS that he was not the person to whom the calls were directed, and he demanded, to no avail, that the calls to stop.

26. Mr. Grugnale is not, and has never been a customer of SLS.

**B. SLS Routinely And Systematically Violates The TCPA**

27. There are numerous entries on Internet sites set up to collect and share complaints about unwanted calls. A number of such sites contain complaints regarding similar calls from the same number regarding SLS. For example there are numerous complaints and comments on 800notes.com about (800) 268-9706, the number SLS frequently uses to contact Mr. Grugnale:

- “These a\*\*\*oles call me every day with their recorded message and 800#. I don’t know what the hell they are calling about, but I don’t want to talk to them.”<sup>1</sup>
- “Sounds like a debt collector... since the number they are calling is a new one for me I assume it is wrong. Obviously I have no intention of calling them back.”<sup>2</sup>
- “This company is calling me everyday (sic) to get a debt collection from someone else. I really hate it, they should go after the real person not

---

<sup>1</sup> *Complaint*, <http://800notes.com/Phone.aspx/1-800-268-9706>, accessed May 14, 2014.

<sup>2</sup> *Id.*

me.”<sup>3</sup>

28. SLS’s website confirms that it is in the business of contacting a large number of debtors for its loan servicing business: “Specialized Loan Servicing LLC (“SLS”) oversees a portfolio of more than 248,000 performing and non-performing loans, totaling more than \$27.5 billion in unpaid balances.”<sup>4</sup>

29. SLS’s use of an ATDS enabled it to make dunning robocalls to a list of cellular telephone numbers.

30. SLS made these calls using equipment with the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers.

31. By use of these methods, SLS made calls that were the same or practically the same as the calls sent to Mr. Grugnale, referenced in Paragraphs 16-23 above, to numerous cell phones throughout the country.

32. Mr. Grugnale never provided SLS with prior express consent to receive such calls from SLS.

33. Mr. Grugnale is not a party to the alleged debt about which he was being contacted. Mr. Grugnale does not now nor did he ever have any business relationship with SLS.

## VI. CLASS ALLEGATIONS

34. Mr. Grugnale brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and a class (the “Class”) defined as follows:

all persons in the United States whose cell phone SLS or its agents called using an ATDS or prerecorded voice, with respect to whom SLS does not have evidence of prior express consent of the called party.

---

<sup>3</sup> *Id.*

<sup>4</sup> *Special Servicing*, <http://www.sls.net/Investors/Special-Servicing/>, accessed May 14, 2014.

35. Mr. Grugnale also brings this action on behalf of a Subclass consisting of members of the Class defined above who reside within the Commonwealth of Massachusetts at the time SLS or its agents made such a call to them (the “Massachusetts Subclass” or “Subclass”).

36. Upon information and belief, there are more than 1,000 members of the Class, and more than 100 members of the Massachusetts Subclass, such that joinder of all members of the Class and Subclass is impracticable.

37. The Class and Subclass defined above are identifiable through phone records and phone number databases.

38. Mr. Grugnale will fairly and adequately represent and protect the interests of the Class members. Mr. Grugnale has retained counsel with substantial experience in prosecuting complex litigation and class actions. Mr. Grugnale and his counsel are committed to vigorously prosecuting this action on behalf of Class members and have the financial resources to do so. Neither Mr. Grugnale nor his counsel have any interest adverse to those of the Class members.

39. A class action is superior to other available methods for fairly and efficiently adjudicating this controversy because, among other things, (a) joinder of all Class members is impracticable; (b) absent a class action, most Class members would find the cost of litigating their claims to be prohibitive, and would have no effective remedy; and (3) the class treatment of common questions of law and fact conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

40. SLS has acted and failed to act on grounds generally applicable to Mr. Grugnale and the Class members, requiring the Court’s imposition of uniform relief to ensure compatible standards of conduct toward the Class members.

41. The factual and legal bases of SLS's liability to Mr. Grugnale and to the Class members are the same, resulting in injury to them caused by SLS's violations of the TCPA.

42. There are many questions of law and fact common to the claims of Mr. Grugnale and Class members, and those questions predominate over any questions that may affect individual Class members. Common questions include but are not limited to the following:

- (a) Did SLS and/or its agents make one or more calls to Class members' cell phones?
- (b) Did the calls made by SLS violate the TCPA?
- (c) Did SLS and/or its agents use an automatic telephone dialing system to transmit the calls at issue?
- (d) Did SLS and/or its agents use prerecorded or artificial voice messages?
- (e) Did SLS have records of Class members' prior express consent to receive the calls at issue?
- (f) Should SLS be enjoined from engaging in such conduct?

**First Cause Of Action**

**Violation of 47 U.S.C. § 227: On behalf of Mr. Grugnale and the Class**

43. SLS made unsolicited commercial calls, including the calls referenced in Paragraphs 16-23 above, to the cellular telephone numbers of Mr. Grugnale and Class members. Each such call was made using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator and to dial such numbers, and/or used a prerecorded voice.

44. These calls were made *en masse* through the use of an ATDS and without the prior express consent of Mr. Grugnale or Class members.

45. SLS has, therefore, violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii). As a result of SLS's conduct, Class members have had their privacy rights violated, suffered actual damages and, under section 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in

damages for each such violation of the TCPA.

46. Because SLS had actual or constructive knowledge that Mr. Grugnale and Class members did not consent to the receipt of the aforementioned robocalls, the Court should, pursuant to section 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable.

**Second Cause of Action  
Injunctive Relief To Bar Future TCPA Violations**

47. The TCPA authorizes injunctive relief to prevent further violations of the TCPA.

48. Mr. Grugnale respectfully petitions this Court to order the Defendants, and their employees, agents and independent distributors, to immediately cease engaging in unsolicited telemarketing in violation of the TCPA.

**RELIEF REQUESTED**

WHEREFORE, Mr. Grugnale, on his own behalf and that of the Class and Subclass, prays for the following relief:

1. An order certifying the Class as defined above;
2. An award of actual or statutory damages, pursuant to the TCPA;
3. Multiple damages;
4. Pursuant to the TCPA, an injunction requiring SLS to cease all robocalls to Class members;
5. An award of reasonable attorneys' fees and costs; and
6. Such further and other relief the Court deems reasonable and just.

**VII. JURY DEMAND**

Mr. Grugnale requests a trial by jury of all claims that can be so tried.

Dated: June 16, 2014

Respectfully submitted,

**BAILEY & GLASSER LLP**

*/s/ Elizabeth Ryan* (BBO # 549632)

*/s/ John Roddy* (BBO # 424240)

125 Summer Street, Suite 1030

Boston, MA 02110

Telephone: 617-439-6730

Facsimile: 617- 951-3954

*Eryan@baileyglasser.com*

*Jroddy@baileyglasser.com*

**LEONARD LAW OFFICE, PC**

*/s/ Preston W. Leonard* (BBO # 680991)

63 Atlantic Avenue, 3d Floor

Boston, MA 02110

Telephone: 617-329-1295

*Pleonard@theleonardlawoffice.com*

*Counsel for Mr. Grugnale and the Class*