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2017-CH-07421
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CIRCUIT COURT OF
COOK COUNTY, ILLINOIS
CHANCERY DIVISION
CLERK DOROTHY BROWN

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

KELLY STRACHE, on behalf of herself and
all others similarly situated,

Plaintiff,

v.

**SCI DIRECT, INC. d/b/a NEPTUNE
SOCIETY,**

Defendant.

Civil Case No.:

CLASS ACTION COMPLAINT

Plaintiff, Kelly Strache, individually and on behalf of all others similarly situated,
through her counsel, and for her Class Action Complaint, states and alleges as follows:

INTRODUCTION

1. This action arises out of Defendant SCI Direct Inc.'s (d/b/a Neptune Society) ("Defendant") practice of placing telemarketing calls to individuals in the absence of any "do not call" policy or training, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* ("TCPA").
2. Because Defendant has failed to implement these mandated policies and procedures, Defendant has made it difficult for persons such as Plaintiff Kelly Strache to stop Defendant's calls once they begin.
3. Despite asking Defendant to stop calling on numerous occasions, Defendant continued to place telemarketing calls to Plaintiff Strache's cellular telephone.

4. Yet because of Defendant's lack of written policy or training, these requests were neither honored nor documented.

5. Plaintiff Strache is not alone. An internet search reveals dozens of reports of unsolicited and unstoppable calls from Defendant.¹

6. All of these telephone calls were made in an effort to convince Plaintiff to purchase services from Defendant, making them telemarketing.

7. Accordingly, Plaintiff brings this TCPA action on behalf of herself and a proposed class of similarly situated individuals for claims under 227(c) of the TCPA.

JURISDICTION AND VENUE

8. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because Defendant conducts business transactions in Illinois, has committed tortious acts in Illinois, and has offices located in Illinois. Additionally, this Court has jurisdiction over Plaintiff Strache because she is a resident of the State of Illinois.

9. Venue is proper in Cook County because Defendant conducts significant amounts of business transactions within Cook County, has offices located in Cook County, and because some of the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from Cook County.

PARTIES

10. Plaintiff is, and at all times mentioned herein was, a citizen and resident of Minooka, Illinois.

¹ See, e.g. <http://800notes.com/Phone.aspx/1-714-935-1955>, last accessed May 5, 2017; <https://www.bbb.org/south-east-florida/business-reviews/cremation-services/neptune-society-in-plantation-fl-7622/reviews-and-complaints>, last accessed May 5, 2017.

11. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

12. Defendant SCI Direct, Inc. is, and at all times mentioned herein was, a Florida corporation headquartered at 1929 Allen Parkway, Houston, TX 77019.

13. Defendant SCI Direct, Inc. is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

14. Defendant maintains an office located in Cook County, Illinois through its Neptune Society of Chicago/Palatine branch. Upon information and belief, some of the calls to Plaintiff were made through this branch.

FACTS

15. Beginning in approximately March 2016, Defendant began placing telephone calls to Plaintiff’s cellular telephone, number 815-###-3849.

16. Plaintiff, on numerous occasions, asked Defendant to stop calling her.

17. These requests were neither honored nor documented.

18. Defendant called Plaintiff dozens of times from approximately March 2016 through May 2016.

19. These calls were made in an effort to convince Plaintiff to purchase Defendant’s cremation services.

20. Given the sensitive subject matter of making funeral arrangements, these constant calls were extremely upsetting and distressing to Plaintiff. Plaintiff, like most people, did not enjoy receiving unsolicited reminders of her mortality.

21. These calls were not made for any emergency purpose.

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22. While Plaintiff may have initially provided consent for the calls, Plaintiff revoked any consent Defendant believed it had.

23. Furthermore, whether or not Plaintiff gave consent, Defendant was required to implement mandated procedures prior to making any telemarketing call to anyone.

24. The TCPA prohibits making “any call for telemarketing purposes” unless the caller has instituted certain minimum standards with respect to persons who request not to receive telemarketing calls.

25. These standards include, among others, keeping a written policy, available upon demand, for maintaining a do-not-call list, and training personnel engaged in telemarketing on the existence and use of the do-not-call list. 47 CFR § 64.1200(d).

26. At the time Defendant made its calls to Plaintiff, Defendant did not have such a written policy, nor did it train personnel engaged in telemarketing on the existence and use of the do-not-call list.

27. Accordingly, all of Defendant’s telemarketing calls, regardless of consent or equipment used, violate 47 U.S.C. § 227(c).

28. Plaintiff has suffered actual injury as a result of Defendant’s telephone calls, including, but not limited to:

- Lost time tending to and responding to the calls;
- Invasion of Privacy;
- Nuisance;
- Trespass to her phone;
- Deprivation of her ability to use her phone in the manner of her choosing;

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- Deprivation of her legal right to revoke consent to be called.

29. Plaintiff is entitled to statutory damages and injunctive relief.

30. Plaintiff is entitled to \$500 for each call placed to her cellular telephone in violation of 47 U.S.C. § 227(c).

31. Defendant's actions were knowing violations of § 227(c) because Defendant knew or should have known it was required to maintain a written "do not call" policy and train personnel on the use of the "do not call" list, precisely to avoid situations such as here where it conveniently lacks records of previous "do not call" requests and continues to make calls after documented "do not call" requests.

32. Defendant's actions were also knowing because of the sheer volume of complaints found online, including through the Better Business Bureau (which notifies businesses of complaints), about its calling practices.

33. Accordingly, Plaintiff is entitled to \$1,500 per call for violations of § 227(c).

CLASS ACTION ALLEGATIONS

34. Plaintiff brings this action pursuant to 735 ILCS 5/2-801 on behalf of a proposed class, defined as follows:

From May 31, 2013 to May 27, 2016, Plaintiff and all persons within the United States to whose telephone number Defendant SCI Direct, Inc. placed two or more calls for telemarketing purposes in any 12-month period.

35. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest; Defendant's agents and employees; any Judge and Magistrate Judge

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to whom this action is assigned and any member of their staffs and immediate families, and any claims for personal injury, wrongful death, and/or emotional distress.

36. **Numerosity.** The Class members for whose benefit this action are brought are so numerous that joinder of all members is impracticable. The number of class members exceeds 550,000.

37. The exact number and identities of the persons who fit within the class are ascertainable in that Defendant maintains written and electronically stored data showing:

- a. The time period(s) during which Defendant placed its telephone calls;
- b. The telephone numbers to which Defendant placed its telephone calls;
- c. The dates Defendant placed telephone calls to particular persons.

38. **Common Questions.** There are common questions of law and fact affecting the rights of the Class members, including, *inter alia*, the following:

- a. Whether Defendant maintained a written “do not call” policy;
- b. Whether Defendant trained its employees or agents engaged in telemarketing on the existence and usage of any “do not call” policy;
- c. Whether Defendant should be enjoined from engaging in such conduct in the future.

39. Common questions will predominate, and there will be no unusual manageability issues.

40. **Adequacy.** Plaintiff will thoroughly and adequately protect the interests of the Class, having retained qualified and competent legal counsel to represent herself and the Class.

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41. Further, Plaintiff is a member of the Class in that Defendant placed two or more calls for telemarketing purposes in a one-year period to her cellular telephone number, in the absence of prior express written consent and without having a written “do not call” policy in place or training its personnel on the existence and use of any such “do not call” policy.

42. Further, Plaintiff’s claims are typical of the Class members’ claims in that they arise from Defendant’s uniform conduct and are based on the same legal theories as Class members’ claims.

43. Plaintiff has no interests antagonistic to, or in conflict with, the Class.

44. Plaintiff and all putative Class members have also necessarily suffered actual damages in addition to statutory damages, as all Class members spent time tending to Defendant’s unwanted calls, suffered a nuisance and an invasion of their privacy, and a deprivation of their right to use their phones or to stop unwanted calls.

45. Defendant has acted and refused to act on grounds generally applicable to the Class, thereby making injunctive and declaratory relief appropriate for the Class.

46. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

47. **Appropriateness.** A class action is appropriate and superior to other available methods for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member make individual actions uneconomical, and to date, only one other person has taken action against Defendant for its unwanted calls, making it unlikely Class members will, can, or intend to enforce their rights individually.

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FIRST CAUSE OF ACTION
Violations of the TCPA, 47 U.S.C. § 227(c)
(On Behalf of Plaintiff and the Proposed Class)

48. Plaintiff and the proposed Class incorporate the foregoing allegations as if fully set forth herein.

49. Defendant placed numerous calls for telemarketing purposes to Plaintiff's and Class members' telephone numbers.

50. Defendant did so despite not having a written policy pertaining to "do not call" requests.

51. Defendant did so despite not training its personnel on the existence or use of any "do not call" list.

52. Plaintiff and Class members each received two or more calls in a 12-month period.

53. Plaintiff and Class members are entitled to an award of \$500 in statutory damages telephone call pursuant to 47 U.S.C. § 227(c)(5).

54. Plaintiff and Class members are entitled to an award of treble damages in an amount up to \$1,500 telephone call, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kelly Strache, individually and on behalf of the Class, prays for the following relief:

- A. An order certifying the Class as defined above, appointing Plaintiff Strache as the representative of the Class, and appointing her counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate 47 U.S.C. §

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227(c);

- C. An award of injunctive and other equitable relief as necessary to protect the interests of the Class, including, *inter alia*, an order prohibiting Defendant from engaging in the wrongful and unlawful acts described herein;
- D. An award of statutory damages for violations of 47 U.S.C. § 227(c);
- E. An award of treble damages;
- F. An award of reasonable attorneys' fees and costs; and
- G. Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

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

Respectfully submitted,

**KELLY STRACHE, on behalf of herself
and all others similarly situated.**

BY: /s/Jeffrey Grant Brown
Jeffrey Grant Brown
One of her attorneys

Dated: May 24, 2017

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