

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION**

CRYSTAL CHAPMAN and JOSEPH	:	
NELUMS, on behalf of themselves and	:	NO. 4:21-cv-00245-WTM-CLR
others similarly situated,	:	
	:	
Plaintiffs,	:	
	:	<b>SECOND AMENDED</b>
v.	:	<b>COMPLAINT – CLASS ACTION<sup>1</sup></b>
	:	
AMERICA'S LIFT CHAIRS, LLC,	:	
	:	<b>JURY TRIAL DEMANDED</b>
Defendant.	:	

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Plaintiffs Crystal Chapman and Joseph Nelums (hereinafter referred to as “Plaintiffs”), individually and on behalf of all others similarly situated, allege on personal knowledge, investigation of their counsel, and on information and belief, as follows:

**NATURE OF ACTION**

1. As the Supreme Court recently explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a

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<sup>1</sup> This Second Amended Complaint is being filed pursuant to Rule 15(a)(2), with the Defendant’s written consent.

constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

2. This case involves a campaign by Prospects DM LLC (“Prospects DM”) on behalf of America’s Lift Chairs, LLC (“America’s Lift”) to market America’s Lift’s services through the use of pre-recorded telemarketing calls in plain violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (hereinafter referred to as the “TCPA”).

3. Prospects DM also made telemarketing calls on America’s Lift’s behalf to residential numbers listed on the National Do Not Call Registry, like the Plaintiffs’, which is prohibited by the TCPA.

4. The recipients of these illegal calls, which include Plaintiffs and the proposed Class, are entitled to damages under the TCPA and because the technology used makes calls *en masse*, the appropriate vehicle for their recovery is a class action lawsuit.

**PARTIES**

5. Plaintiff Crystal Chapman is, and at all times mentioned herein was, an individual citizen of New York.

6. Plaintiff Joseph Nelums is, and at all times mentioned herein was, an individual citizen of New Mexico.

7. Defendant America's Lift Chairs, LLC is a Georgia limited liability company with a registered agent of Jason Jue, 2 Village Walk, Suite 204 in Savannah, GA 31411.

**JURISDICTION AND VENUE**

8. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227, *et seq.*

9. This Court has personal jurisdiction over America's Lift because the company is a resident of this District.

10. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the telephone calls at issue were placed on behalf of America's Lift, which resides in this District.

## **TCPA BACKGROUND**

### **The TCPA Prohibits Automated Telemarketing Calls**

11. The TCPA makes it unlawful to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service or that is charged per the call. *See* 47 U.S.C. § 227(b)(1)(A)(iii).

12. The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A) or 47 U.S.C. § 227(b)(1)(B). *See* 47 U.S.C. § 227(b)(3).

13. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

14. The FCC also recognized that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order, 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

15. In 2013, the FCC required prior express written consent for all autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers and residential lines. Specifically, it ordered that:

[A] consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received “clear and conspicuous disclosure” of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.[] In addition, the written agreement must be obtained “without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.[]”

*In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

#### The National Do Not Call Registry

16. The National Do Not Call Registry allows consumers to register their telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2).

17. A listing on the Registry “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*

18. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to residential telephone subscribers to the Registry and

provides a private right of action against any entity that makes those calls, or “on whose behalf” such calls are promoted. 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

### **FACTUAL ALLEGATIONS**

19. Defendant is a “person” as the term is defined by 47 U.S.C. § 153(39).

20. Plaintiffs are “person[s]” as the term is defined by 47 U.S.C. § 153(39).

21. Plaintiff Chapman’s telephone number, (585) 414-XXXX, is registered to a cellular telephone service and has been for years prior to receipt of the calls at issue.

22. The number has been registered on the National Do Not Call Registry since May of 2021.

23. Mrs. Chapman uses the number for personal, residential, and household reasons.

24. The number is not associated with any business.

25. Prospects DM placed multiple telemarketing calls to Plaintiff Chapman’s number on July 20, 2021.

26. The calls solicited the Plaintiff to purchase America’s Lift’s products.

27. Indeed, the pre-recorded message indicated that the makers of medical alerts and hearing aids were now introducing lift chairs.

28. Even after the filing of the lawsuit, the Plaintiff Chapman was sent another pre-recorded call from Prospects DM for America's Lift.

29. This call occurred on November 18, 2021.

30. A similar pre-recorded message regarding lift chairs was played.

31. The Plaintiff Chapman's husband answered the call and spoke with "Lizzy".

32. "Lizzy" promoted America's Lift services.

33. The Plaintiff Chapman's husband asked to no longer receive calls.

34. Plaintiff Chapman did not provide her prior express written consent to receive the telemarketing calls at issue.

35. Plaintiff Nelums's telephone number, (210)-710-XXXX, is registered to a cellular telephone service and has been for years prior to receipt of the calls at issue.

36. The number has been registered on the National Do Not Call Registry since June of 2003.

37. Mr. Nelums uses the number for personal, residential, and household reasons.

38. The number is not associated with any business.

39. Prospects DM placed multiple prerecorded telemarketing calls to Plaintiff Nelums's number, including on April 15, April 25, and May 3, 2022.

40. The recordings calls solicited the Plaintiff Nelums to purchase America's Lift's products.

41. During the April 15 call, the Plaintiff Nelums then spoke with "Izzy".

42. "Izzy" promoted America's Lift services by explaining the lift chairs' benefits, customizable options, warranty, and price.

43. "Izzy" identified [www.americasliftchair.com](http://www.americasliftchair.com) as the website Plaintiff Nelums could visit to get more information concerning the products she was selling.

44. After the April 15 call, the Plaintiff Nelums sent a letter to America's Lift Chairs demanding that they stop calling him, but the calls continued.

45. Plaintiff Nelums did not provide his prior express written consent to receive the telemarketing calls at issue.

46. The calls to Plaintiffs were not necessitated by an emergency.

47. Plaintiffs and all members of the Classes, defined below, have been harmed by the acts of Defendant because their privacy has been violated, they were annoyed and harassed, and, in some instances, may have been charged for



incoming calls. Plaintiffs and the Class Members were also harmed by use of their telephone power and network bandwidth and the intrusion on their telephone that occupied it from receiving legitimate communications.

**America’s Lift’s Liability for Prospects DM’s and Vozova’s Conduct**

48. For more than twenty-five years, the FCC has explained that its “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any violations.” *In re Rules & Regulations Implementing the TCPA*, CC Docket No. 92-90, Memorandum Opinion and Order, 10 FCC Rcd 12391, 12397 (¶ 13) (1995).

49. In fact, the Federal Communication Commission has instructed that sellers such as America’s Lift may not avoid liability by outsourcing telemarketing to third parties, such as Prospects DM:

[A]llowing the seller to avoid potential liability by outsourcing its telemarketing activities to unsupervised third parties would leave consumers in many cases without an effective remedy for telemarketing intrusions. This would particularly be so if the telemarketers were judgment proof, unidentifiable, or located outside the United States, as is often the case. Even where third-party telemarketers are identifiable, solvent, and amenable to judgment limiting liability to the telemarketer that physically places the call would make enforcement in many cases substantially more expensive and less efficient, since consumers (or law enforcement agencies) would be required to sue each marketer separately in order to obtain effective relief. As the FTC noted, because “[s]ellers may have thousands of ‘independent’ marketers, suing one or a few of them is unlikely to make a substantive difference for consumer privacy.”

*May 2013 FCC Ruling*, 28 FCC Rcd at 6588 (¶ 37) (internal citations omitted).

50. On May 9, 2013, the FCC released a Declaratory Ruling holding that a corporation or other entity that contracts out its telephone marketing “may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.”<sup>2</sup>

51. America’s Lift is liable for Prospects DM’s conduct because they control the manner and means of their telemarketing methods by:

- a) expressly agreeing to their business mode of using a call center to generate sales;
- b) instructing them on the geographic regions they can make calls into;
- c) providing qualifications for potential clients to be sent, including age and personal health requirements; and
- d) requiring a specific minimum number of sales per week.

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<sup>2</sup> *In re Joint Petition Filed by DISH Network, LLC et al. for Declaratory Ruling Concerning the TCPA Rules*, 28 FCC Rcd 6574, 6574 (¶ 1) (2013) (“May 2013 FCC Ruling”).

52. America's Lift knew (or reasonably should have known) that Prospects DM was violating the TCPA on its behalf and failed to take effective steps within its power to force the telemarketer to cease that conduct.

53. Any reasonable seller that accepts telemarketing call leads from lead generators would, and indeed must, investigate to ensure that those calls were made in compliance with TCPA rules and regulations.

54. Notably, Prospects DM has been repeatedly implicated in TCPA lawsuits as a call center that makes illegal calls without consumer consent.

55. Prospects DM has been the subject of multiple TCPA lawsuits, including involvement both in lawsuits where they were named and also lawsuits where they were identified as the calling party. *See Gunn v. Prospects DM, LLC*, No. 4:19CV3129 HEA, 2021 U.S. Dist. LEXIS 74746 (E.D. Mo. Apr. 19, 2021); *Williams v. Pillpack*, 2021 U.S. Dist. LEXIS 27496 (W.D. Wash. Feb. 12, 2021); *Jones v. Safe Sts. USA LLC*, No. 5:19-CV-394-BO, 2020 U.S. Dist. LEXIS 105364 (E.D.N.C. June 16, 2020); *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142 (S.D. Cal. 2019).

56. In fact, America's Lift's CEO, Jason Jue, previously managed another company, Icot Hearing Systems, LLC, which settled a TCPA class action against it based on calls made on its behalf by Prospects DM after filing a third party

complaint against Prospects DM. *See Hennie v. Icot Hearing Systems, LLC*, No. 1:18-cv-2045 (N.D. Ga.).

57. Indeed, after receipt of this lawsuit the Defendant continued its relationship with Prospects DM, which led to it sending another call to the Plaintiff Chapman and calls to Plaintiff Nelums.

58. Finally, the May 2013 FCC Ruling states that called parties may obtain “evidence of these kinds of relationships . . . through discovery, if they are not independently privy to such information.” *Id.* at 6592-593 (¶ 46). Evidence of circumstances pointing to apparent authority on behalf of the telemarketer “should be sufficient to place upon the seller the burden of demonstrating that a reasonable consumer would not sensibly assume that the telemarketer was acting as the seller’s authorized agent.” *Id.* at 6593 (¶ 46).

### **CLASS ACTION ALLEGATIONS**

59. Plaintiffs bring this action on behalf of themselves and the following Classes (the “Classes”) pursuant to Federal Rule of Civil Procedure 23.

60. Plaintiffs propose the following Class definitions, subject to amendment as appropriate:

**Robocall Class:** All persons within the United States: (1) to whose cellular telephone number or other number for which they are charged for the call (2) Prospects DM on behalf of America’s Lift placed a call (3) using an

identical or substantially similar pre-recorded message used to place telephone calls to Plaintiff (4) from four years prior to the filing of the Complaint through trial.

**National Do Not Call Registry Class**: All persons within the United States whose (1) telephone numbers were on the National Do Not Call Registry for at least 31 days, (2) but who received more than one telemarketing calls from Prospects DM on behalf of America's Lift (3) within a 12-month period, (4) from four years prior to the filing of the Complaint through trial.

61. Each Plaintiff is a member of and will fairly and adequately represent and protect the interests of the Classes as she has no interests that conflict with any of the class members.

62. Excluded from the Classes are counsel, the Defendant, and any entities in which the Defendant has a controlling interest, the Defendant's agents and employees, any judge to whom this action is assigned, and any member of such judge's staff and immediate family.

63. Plaintiffs and all members of the Classes have been harmed by the acts of the Defendant, including, but not limited to, the invasion of their privacy, annoyance, waste of time, the use of their telephone power and network bandwidth, and the intrusion on their telephone that occupied it from receiving legitimate communications.

64. This Class Action Complaint seeks injunctive relief and money damages.

65. The Classes are defined above are identifiable through the Prospects DM's dialer records, other phone records, and phone number databases.

66. Plaintiffs do not know the exact number of members in the Classes, but Plaintiffs reasonably believe members number, at minimum, in the thousands in each class.

67. The joinder of all class members is impracticable due to the size and relatively modest value of each individual claim.

68. Additionally, the disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

69. There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact, referred to above, involving the class claims predominate over questions which may affect individual class members.

70. There are numerous questions of law and fact common to Plaintiffs and to the proposed Classes, including but not limited to the following:

- (a) Whether the Prospects DM used pre-recorded message to send telemarketing calls;
- (b) whether Prospects DM made calls to Plaintiffs and members of the Classes without first obtaining prior express written consent to make the calls;

- (c) whether Prospects DM accessed and removed numbers from its calling list that were on the National Do Not Call registry;
- (d) whether Prospects DM's conduct constitutes a violation of the TCPA;
- (e) whether America's Lift is vicariously liable for Prospects DM's conduct; and
- (f) whether members of the Classes are entitled to treble damages based on the willfulness of Defendant's conduct.

71. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions, and especially TCPA class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other members of the Classes.

72. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy.

### **FIRST CAUSE OF ACTION**

#### **Violation of the Telephone Consumer Protection Act 47 U.S.C. 227(b) on behalf of the Robocall Class**

73. Plaintiffs incorporate the allegations from paragraphs 1-72 as if fully set forth herein.

74. The foregoing acts and omissions of Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiffs and members of the Robocall Class delivering pre-recorded messages.

75. As a result of Defendant's and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf violations of the TCPA, 47 U.S.C. § 227, Plaintiffs and members of the Robocall Class presumptively are entitled to an award of \$500 in damages for each and every call made to their cellular telephone numbers using an artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

76. If the Defendant's conduct is found to be knowing or willful, the Plaintiffs and members of the Robocall Class are entitled to an award of up to treble damages.

77. Plaintiffs and members of the Robocall Class are also entitled to and do seek injunctive relief prohibiting Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf from sending an artificial or prerecorded voice, except for emergency purposes, to any cellular telephone number in the future.



**SECOND CAUSE OF ACTION**

**Violation of the Telephone Consumer Protection Act  
47 U.S.C. 227(c) on behalf of the National Do Not Call Registry Class**

78. Plaintiffs incorporate the allegations from paragraphs 1-72 as if fully set forth herein.

79. The foregoing acts and omissions of Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making telemarketing calls, except for emergency purposes, to the Plaintiffs and the National Do Not Call Registry Class despite their numbers being on the National Do Not Call Registry.

80. The Defendant's violations were negligent, willful, or knowing.

81. As a result of Defendant's and/or its affiliates, agents, and/or other persons or entities acting on Defendant's behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiffs and members of the National Do Not Call Registry Class presumptively are entitled to an award of between \$500 and \$1,500 in damages for each and every call made.

82. Plaintiffs and members of the National Do Not Call Registry Class are also entitled to and do seek injunctive relief prohibiting Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf

from making telemarketing calls to numbers on the National Do Not Call Registry, except for emergency purposes, in the future.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, individually and on behalf of the Classes, prays for the following relief:

A. Injunctive relief prohibiting Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf from sending an artificial or prerecorded voice, except for emergency purposes, to any cellular telephone number in the future;

B. Injunctive relief prohibiting Defendant and/or their affiliates, agents, and/or other persons or entities acting on Defendant's behalf from making telemarketing calls to numbers on the National Do Not Call Registry, except for emergency purposes, in the future.

C. That the Court enter a judgment awarding Plaintiffs and all class members statutory damages of \$500 for each violation of the TCPA and \$1,500 for each knowing or willful violation; and

D. An order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class the Court deems appropriate, finding that Plaintiffs are proper representatives of the Class,

and appointing the lawyers and law firms representing Plaintiffs as counsel for the Class;

E. Such other relief as the Court deems just and proper.

**JURY DEMAND**

Plaintiff requests a jury trial as to all claims of the complaint so triable.

Dated: January 25, 2023

PLAINTIFFS, individually and  
on behalf of others similarly situated,

By:

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**CERTIFICATE OF COMPLIANCE WITH L.R. 5.1.C & 7.1.D**

Pursuant to L.R. 7.1.D, I certify that this document has been prepared with  
14-point, Times New Roman font, approved by the Court in L.R. 5.1.C.

/s/ Anthony I. Paronich  
Anthony I. Paronich (*pro hac vice*)