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Attorney for Plaintiff
and those similarly situated

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEBRASKA**

BEN FABRIKANT, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CLEAR LINK TECHNOLOGIES, LLC, a
Utah limited liability company,

Defendant.

Case No.: 8:20-cv-00470

CLASS ACTION COMPLAINT

Jury Trial Demanded

CLASS ACTION COMPLAINT

1. Plaintiff BEN FABRIKANT (“Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant CLEAR LINK TECHNOLOGIES, LLC, (“Defendant” or “CLT”) to stop their illegal practice of making illegal robocalls to the cellular and residential telephones of consumers nationwide, and to obtain redress for all persons injured by their conduct. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorney.

NATURE OF THE ACTION

2. Defendant CLT is company that markets and sells consumer health plans. As a part of their marketing of residential mortgages, CLT sent thousands of artificial or prerecorded voice messages to consumers' phones nationwide.

3. CLT did not obtain express written consent prior to sending these artificial or prerecorded voice messages and, therefore, is in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

5. The TCPA targets unauthorized calls exactly like the ones alleged in this case, based on Defendant's use of technological equipment to spam consumers with its advertising on a grand scale.

6. By placing the calls at issue, CLT violated the privacy and statutory rights of Plaintiff and the Class.

7. Plaintiff therefore seeks an injunction requiring Defendant to stop its unconsented calling, as well as an award of actual and statutory fines to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

8. Plaintiff BEN FABRIKANT is a natural person and is a citizen of Omaha, Nebraska.

9. Defendant CLT is a limited liability company organized and existing under the laws of the state of Delaware with its principal place of business at 5202 W. Douglas Corrigan Way #300 Salt Lake City, Utah 84116.

10. CLT's Registered Agent is Paracorp Incorporated, 2140 S Dupont Hwy, Camden, DE 19934.

JURISDICTION AND VENUE

11. This Court has federal subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227, which is a federal statute.

12. This Court has specific personal jurisdiction over Defendant CLT because Defendant caused the violating phone calls to be placed to Plaintiff in this District.

13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the injury substantially occurred in this District.

COMMON FACTUAL ALLEGATIONS

14. Defendant CLT sells consumer health plans.

15. CLT caused artificial or prerecorded voice messages to be sent to thousands of cellular and residential phones numbers.

16. When the Class members answered their phones expecting to hear from a real person, Defendant pulled a bait and switch by playing an artificial or prerecorded voice message advertising health plans.

17. Unfortunately, CLT failed to obtain consent from Plaintiff and the Class before bombarding them with these illegal voice recordings.

FACTS SPECIFIC TO PLAINTIFF

18. On May 29, 2020 at 2:21 p.m., Plaintiff received a call on his residential phone from a call with the Caller ID appearing as (402) 778-6542.

19. The call was from a “spoofed” or fake area code that was designed to trick Plaintiff into answering, because Plaintiff also had the same area code.

20. When Plaintiff answered the call, Plaintiff heard an artificial or prerecorded voice message advertising health plans.

21. The voice said “stay on the line to hear information about supplemental medical insurance.”

22. Plaintiff stayed on the line for approximately ten minutes.

23. Plaintiff was connected with a Clearlink representative whose first name and last initial is “Liz B.”

24. Liz B. solicited Plaintiff for a Humana health plan.

25. On the same day, Plaintiff also received an email from Liz B from Clearlink.

26. Plaintiff never consented to receive calls from Defendant. Plaintiff had never heard of Defendant and had no relationship whatsoever with Defendant prior to this interaction.

27. Defendant’s calls violated Plaintiff’s statutory rights and caused actual and statutory damages.

28. In addition to causing statutory damages, these illegal call(s) caused annoyance, intrusion on privacy and seclusion, and wasted time to Plaintiff.

CLASS ALLEGATIONS

29. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3) on behalf of Plaintiff and a class defined as follows:

TCPA Class. All persons in the United States who: (1) from the last 4 years to present (2) whose cellular or residential telephone were called (3) using an artificial or prerecorded voice message; (4) to promote Defendant's products and services;

30. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or their parents have a controlling interest and its current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendant's counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

31. **Numerosity:** The exact number of the Class members is unknown and not available to Plaintiff, but it is clear that individual joinder is impracticable. On information and belief, Defendant placed telephone calls to thousands of consumers who fall into the definition of the Class. Members of the Class can be identified through Defendant's records.

32. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class, in that Plaintiff and the Class members sustained damages arising out of Defendant's uniform wrongful conduct and unsolicited telephone calls.

33. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiff's claims are made in a representative capacity on behalf of the other members of the Class. Plaintiff has no interests

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