

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

NEIL KRAN, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

HEARST COMMUNICATIONS, INC., a
Delaware corporation, A MARKETING
RESOURCE, LLC, a Minnesota limited
liability company,

Defendants.

Case No. 0:15-cv-02058-MJD-BRT

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff Neil Kran (“Kran”) brings this First Amended Class Action Complaint and Demand for Jury Trial (the “FAC”) against Defendants Hearst Communications, Inc. (“Hearst”) and A Marketing Resource LLC (“AMR,” and collectively, “Defendants”)¹ to stop their practice of making unsolicited calls to the telephones of consumers nationwide and to obtain redress for all persons injured by their conduct. Plaintiff, for his FAC, 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 attorneys.

NATURE OF THE ACTION

1. Defendant Hearst is an international media conglomerate, which owns

¹ Plaintiff filed his original Complaint in this action on April 20, 2015 naming Hearst Newspaper LLC and AMR as party-Defendants. (Dkt. 1.) Plaintiff now files the instant Complaint to substitute Defendant Hearst Communications, Inc. as the real party in interest. Prior to filing the FAC, counsel for the Parties conferred, and Defendants agreed that the instant pleading and all future pleadings naming Defendants shall relate back to the filing of Plaintiffs’ original Complaint.

newspapers, TV stations, and websites. One such newspaper owned and operated by Defendant Hearst is the *San Francisco Chronicle*. Defendant AMR is a marketing agency that provides inbound and outbound calling solutions from call centers located across the United States.

2. In its capacity as an outbound call center, Defendant AMR acts as a direct agent of Defendant Hearst by making telemarketing calls to consumers in order to sell subscriptions for the *San Francisco Chronicle*.

3. Unfortunately for consumers, in their widespread marketing efforts, Defendants repeatedly made unsolicited promotional telephone calls to Plaintiff and the other members of the putative Class, whose telephone numbers appeared on the National Do Not Call Registry, all in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (the “TCPA”).

4. By making the telephone calls at issue in this FAC, Defendants caused Plaintiff and the members of the Class actual harm, including the aggravation and nuisance, as well as the invasion of privacy, which necessarily accompanies the receipt of unsolicited and harassing telephone calls.

5. The TCPA was enacted to protect consumers from unsolicited phone calls exactly like those alleged in this case. In response to Defendants’ unlawful conduct, Plaintiff filed the instant lawsuit and seeks an injunction requiring Defendants to cease all unsolicited telephone calling activities and an award of statutory damages to the members of the Class under the TCPA, together with costs and reasonable attorneys’ fees.

PARTIES

6. Plaintiff Neil Kran is a natural person and citizen of the State of California.

7. Defendant Hearst Communications, Inc., is a corporation existing under the laws of the State of Delaware with its principal place of business located at 300 West 57th Street, 24th Floor, New York, New York 10019. Defendant Hearst Communications, Inc. regularly conducts business throughout this District, the State of Minnesota, and the United States. Defendant Hearst Communications manages, directs, and operates the *San Francisco Chronicle*.

8. Defendant A Marketing Resource LLC is a corporation existing under the laws of the State of Minnesota with its principal place of business located at 1811 Weir Drive, Suite 350, Woodbury, Minnesota 55125.

JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute. This Court has personal jurisdiction over Defendants because Defendant AMR resides in this District, and both Defendants conduct significant business transactions within this District, solicit consumers in this District, and because they made and continue to make unsolicited calls to this District.

10. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant AMR resides in this District and because both Defendants conduct significant business transactions in this District.

COMMON FACTUAL ALLEGATIONS

11. Since its acquisition of the *San Francisco Chronicle*, Defendant Hearst has seen an overall decline in circulation and decline in revenue. In response, Defendant Hearst has turned to a tried and true method of acquiring new customers: widespread telemarketing.

12. Defendant Hearst works jointly with Defendant AMR to sell new subscriptions to the *San Francisco Chronicle*. Specifically, Defendant Hearst hired Defendant AMR and directed it to make telemarketing calls on its behalf selling newspaper subscriptions. Defendant AMR holds itself out as specializing in the newspaper industry and offers a variety of services, including “Lead Generation - qualify suspects and prospects, Sales Acquisition - selling products or services, Outbound Telemarketing - proactive marketing; contacting preexisting or prospective customers, [and] Survey Marketing - market research.”²

13. Defendant Hearst plays an active role in the management, operation, and direction of the *San Francisco Chronicle*. As noted by Heart Corporation CEO Frank Bennack, Hearst “works with” the executives of the *Chronicle* to “redefine the choices for how and where readers can experience the trusted Chronicle content they depend on.”³

² See *About Us* <http://www.4amr.net/#!/services/c1739> (last visited on March 18, 2016).

³ See *Hearst Taps Demand Media’s Bradford and Yucaipa’s Johnson to “Redefine” the San Francisco Chronicle*, <http://allthingsd.com/20130523/hearst-taps-demand-medias-bradford-and-yucaipas-johnson-redefine-the-san-francisco-chronicle> (last visited on March 18, 2016). *San Francisco Chronicle* executives work with and report directly to

14. Defendant Hearst directed and permitted Defendant AMR's telemarketers to represent themselves as the *San Francisco Chronicle* when placing telemarketing calls; likewise, Defendant Hearst allowed AMR to use the *San Francisco Chronicle* on its caller ID, giving the clear impression to call recipients that it was Defendant Hearst itself making the call. In essence, Defendant AMR stepped into the shoes of Defendant Hearst, with Hearst's full authorization and permission, in order to place unsolicited telemarketing calls.

15. Defendants made (and continue to make) these telemarketing calls to consumers without their prior express consent to do so. Most notably, Defendants place repeated and unwanted calls to consumers whose phone numbers are registered with the National Do Not Call Registry. Consumers register their phone numbers on the Do Not Call Registry for the express purpose of avoiding unwanted telemarketing calls like those alleged here.

16. Defendants are fully aware that these unsolicited calls are being made to consumers who have not provided express consent to receive such calls.

17. Defendants knowingly made (and continue to make) these telemarketing calls without the prior express consent of the call recipients and knowingly continue to

Hearst Newspapers President Mark Aldam. *See* <https://www.mediabistro.com/interviews/so-what-do-you-do-mark-aldam-president-of-hearst-newspapers/> (last visited on March 17, 2016) (Hearst Newspapers President Mark Aldam stating "I'm actively involved in working with our unit leaders on execution and developing our strategic footprint and bringing new products to market. So I spend about two weeks out of every month on the road with our leadership teams in San Francisco, Houston, San Antonio, Albany, Connecticut, Buffalo, New York; and then in some smaller markets. But, generally, I'm very actively involved in managing the day-to-day operations of our units.")

call them after requests to stop. In so doing, Defendants not only invaded the personal privacy of Plaintiff and members of the putative Class, but also intentionally and repeatedly violated the TCPA.

FACTS SPECIFIC TO PLAINTIFF KRAN

18. Starting in or around January 2015, Plaintiff Neil Kran began receiving calls on his landline telephone from the phone number (415) 578-9132. The calls appeared with the caller ID “SF Chronicle.”

19. Specifically, Plaintiff received calls on January 19th (two calls) and January 20th (two calls). Plaintiff first answered a call on January 19th, and then answered a second call on the 20th.

20. When Plaintiff answered the first time, the telemarketer indicated that she was calling from the *San Francisco Chronicle* and asked whether he would like to subscribe. Plaintiff indicated that he was not interested in subscribing, that he had never been a subscriber, that the number called was on the National Do Not Call Registry, and asked to not be called again. Yet, Defendants called a second time that same day. On the 20th, Plaintiff again answered and the telemarketer identified that she was calling from the *San Francisco Chronicle* and asked whether he would like to subscribe. Plaintiff instructed Defendants to stop calling. Defendants thereafter subsequently called a second time on the 20th.

21. Plaintiff does not have any form of a relationship with Defendants, has never subscribed to the *San Francisco Chronicle*, has never provided his landline telephone number directly to Defendants, or requested that Defendants place calls to him

or offer him their services. Simply put, Plaintiff has never provided his prior express consent to Defendants to place calls to him and has no prior or current business relationship with Defendants. Likewise, Plaintiff's wife does not have any form of a relationship with Defendants, has never subscribed to the *San Francisco Chronicle*, has never provided her landline telephone number directly to Defendants, or requested that Defendants place calls to her or offer her their services.

22. Plaintiff's landline telephone number has been registered with the National Do Not Call Registry since December 2012, for the explicit purpose of avoiding telemarketing calls just like those alleged in this case.

23. In the previous twelve months, Plaintiff has received at least four phone calls from Defendants, including more than one call after he requested that the calls cease.

24. Defendants are and were aware that the above-described telephone calls were and are being made to consumers like Plaintiff who had not consented to receive them and whose telephone numbers were registered with the National Do Not Call Registry.

CLASS ALLEGATIONS

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

All individuals in the United States (1) who had his or her telephone number(s) registered with the National Do Not Call Registry for at least thirty days; (2) who have not subscribed to the *San Francisco Chronicle* for at least 18 months (or who have never subscribed at all); (3) who received more than one telephone call made by Defendant A Marketing Resource LLC promoting the *San Francisco Chronicle*; (4) within a 12-month period; and (5) for whom Defendants have no current record of consent to place such calls.

The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' subsidiaries, parents, successors, predecessors, and any entity in which the Defendants 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 Defendants' counsel; and (6) the legal representatives, successors, and assigns of any such excluded persons.

26. **Numerosity:** The exact size of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendants made telephone calls to thousands of consumers who fall into the definition of the Class. Members of the Class can be easily identified through Defendants' records.

27. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) Whether Defendants' conduct constitutes a violation of the TCPA;
- (b) Whether Defendants systematically made telephone calls to members of the Class who Defendants did not have a current record of consent to make such telephone calls;
- (c) Whether Defendants systematically made telephone calls to members of the Class whose telephone numbers were registered with the National Do Not Call Registry; and
- (d) Whether members of the Class are entitled to treble damages based on the willfulness of Defendants' conduct.

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

29. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants has no defenses unique to Plaintiff. Plaintiff and his counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff nor his counsel has any interest adverse to the Class.

30. **Policies Generally Applicable to the Class:** This class action is appropriate for certification because Defendants have acted or refused to act on grounds generally applicable to the Class as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making final injunctive relief appropriate with respect to the Class as a whole.

Defendants' policies challenged herein apply and affect members of the Class uniformly and Plaintiff's challenge of these policies hinges on Defendants' conduct with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. Defendants have acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class. The factual and legal bases of Defendants' liability to Plaintiff and to the other members of the Class are the same, resulting in injury to the Plaintiff and to all of the other members of the Class. Plaintiff and the other members of the Class have suffered similar harm and damages as a result of Defendants' unlawful and wrongful conduct.

31. **Superiority:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendants' misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this FAC. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and

comprehensive supervision by a single Court. Economies of time, effort and expense will be fostered and uniformity of decisions ensured.

FIRST CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On behalf of Plaintiff and the Class)

32. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

33. 47 U.S.C. § 227(c) provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.

34. The TCPA’s implementing regulation, 47 C.F.R. § 64.1200(c), provides that “[n]o person or entity shall initiate any telephone solicitation” to “[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.”

35. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers to the extent described in the Commission’s Report and Order, CG Docket No. 02-278, FCC 03-153, ‘Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,’” which the Report and Order, in turn, provides as follows:

The Commission's rules provide that companies making telephone solicitations to residential telephone subscribers must comply with time of day restrictions and must institute procedures for maintaining do-not-call lists. For the reasons described above, we conclude that these rules apply to calls made to wireless telephone numbers. We believe that wireless subscribers should be afforded the same protections as wireline subscribers.

36. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity.

The procedures instituted must meet the following minimum standards:

(1) Written policy. Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

(4) Identification of sellers and telemarketers. A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made."

37. Defendants violated § 64.1200(c) by initiating, or causing to be initiated, telephone solicitations to residential and wireless telephone subscribers such as Plaintiff and the Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government. These consumers requested to not receive calls from Defendants, as set forth in § 64.1200(d)(3).

38. Defendants made more than one unsolicited telephone call to Plaintiff and members of the Class within a 12-month period without their prior express consent to receive such calls. Plaintiff and members of the Class never provided any form of consent to receive telephone calls from Defendants, and/or Defendants does not have a current record of consent to place telemarketing calls to them.

39. Defendants violated § 64.1200(d) by initiating calls for telemarketing purposes to residential and wireless telephone subscribers, such as Plaintiff and the Class, without instituting procedures that comply with the regulatory minimum standards for maintaining a list of persons who request not to receive telemarketing calls from them.

40. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Class received more than one telephone call in a 12-month period made by or on behalf of Defendants in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendants' conduct as alleged herein, Plaintiff and the Class suffered actual damages and, under section 47 U.S.C. § 227(c), are each entitled, *inter alia*, to receive up to \$500 in damages for such violations of § 64.1200.

41. To the extent Defendants' misconduct is determined to be willful and knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of statutory damages recoverable by the members of the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Neil Kran, individually and on behalf of the Class, prays for the following relief:

1. An order certifying the Class as defined above, appointing Plaintiff Neil Kran as the representative of the Class, and appointing his counsel as Class Counsel;
2. An award of actual and statutory damages;
3. An injunction requiring Defendants to cease all unsolicited telephone calling activities, and otherwise protecting the interests of the Class;
4. An award of reasonable attorneys' fees and costs; and
5. 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,

NEIL KRAN, individually and on behalf of all others similarly situated,

Dated: March 18, 2016

By: Eve-Lynn J. Rapp
One of Plaintiff's Attorneys

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CERTIFICATE OF SERVICE

I Eve-Lynn J. Rapp, an attorney, hereby certify that on March 18, 2016, I served the above and foregoing ***First Amended Class Action Complaint*** by causing a true and accurate copy of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system, on this the 18th day of March, 2016.

/s/ Eve-Lynn J. Rapp _____