

1 **BURSOR & FISHER, P.A.**

2 L. Timothy Fisher (State Bar No. 191626)
3 Annick M. Persinger (State Bar No. 272996)
4 Yeremey O. Krivoshey (State Bar No. 295032)
5 1990 North California Blvd., Suite 940
6 Walnut Creek, CA 94596
7 Telephone: (925) 300-4455
8 Facsimile: (925) 407-2700
9 E-Mail: ltfisher@bursor.com
10 apersinger@bursor.com
11 ykrivoshey@bursor.com

8 **BURSOR & FISHER, P.A.**

9 Scott A. Bursor (State Bar No. 276006)
10 888 Seventh Avenue
11 New York, NY 10019
12 Telephone: (212) 989-9113
13 Facsimile: (212) 989-9163
14 E-Mail: scott@bursor.com

13 *Attorneys for Plaintiff*

14 UNITED STATES DISTRICT COURT
15 EASTERN DISTRICT OF CALIFORNIA

17 KINAYA HEWLETT, on Behalf of Herself and
18 all Others Similarly Situated,

19 Plaintiff,

20 v.

21 CONSOLIDATED WORLD TRAVEL, INC.
22 d/b/a HOLIDAY CRUISE LINE,

23 Defendant.

Case No. 2:16-cv-00713-WBS-AC

**FIRST AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

Hon. William B. Shubb

1 Plaintiff Kinaya Hewlett (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges the following on information and belief, except that Plaintiff’s allegations as to her
3 own actions are based on personal knowledge.

4 **NATURE OF THE ACTION**

5 1. In March 2016 Consolidated World Travel, Inc. d/b/a Holiday Cruise Line
6 (“Defendant” or “Holiday”) and/or its agents made unsolicited and harassing telemarketing calls to
7 Plaintiff on her cellular telephone using an automatic telephone dialing system and an artificial or
8 prerecorded voice. Plaintiff did not give Holiday prior express written consent to make these calls.

9 2. Plaintiff brings this action for injunctive relief and statutory damages arising out of
10 and relating to the conduct of Defendant in negligently, knowingly, and willfully contacting
11 Plaintiff and class members on their telephones using an autodialer and artificial or prerecorded
12 voice without their prior express written consent within the meaning of the Telephone Consumer
13 Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”).

14 **PARTIES**

15 3. Plaintiff Kinaya Hewlett is, and at all times mentioned herein was, a resident of
16 Sacramento, California, and a citizen of the State of California.

17 4. Defendant Consolidated World Travel, Inc. d/b/a Holiday Cruise Line is a Florida
18 corporation with its principal place of business located at 2121 W. Oakland Park Blvd., Suite 1,
19 Fort Lauderdale, Florida 33311.

20 **JURISDICTION AND VENUE**

21 5. This Court has subject matter jurisdiction over this action pursuant to the Class
22 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*, amends 28
23 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as
24 here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed
25 class have a different citizenship from Defendant; and (c) the claims of the proposed class
26 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C.
27 § 1332(d)(2) and (6).

1 14. Ms. Hewlett has never consented in writing, or otherwise, to receive these
2 autodialed telephone calls from Defendant. She never had any contact with Defendant prior to the
3 calls at issue.

4 15. Ms. Hewlett has also received autodialed and robotic telephone calls from
5 Defendant originating from telephone numbers other than (916) 340-8242.

6 16. When Ms. Hewlett answered calls from Defendant and/or its agents, she heard a
7 pause or dead air before a robotic-sounding recorded voice began, indicating use of an automatic
8 telephone dialing system and artificial or prerecorded voice. After the robotic-sounding voice
9 concluded, a live person came onto the phone as well. The agent attempted to sell Ms. Hewlett a
10 “free cruise.”

11 17. Ms. Hewlett has repeatedly made requests to Defendant and/or its agent for the calls
12 to stop. But the calls continued despite these requests.

13 **C. Complaints Regarding Defendant’s Unsolicited Calls**

14 18. Online consumer complaints regarding Defendant’s unsolicited robocalls and
15 autodialed calls are abundant:

- 16 • “Type of Call: Prerecorded Voice
17 Intention of Call: Solicitation
18 Selling: Free Cruise”¹
- 19 • “Kept rushing me to give them my credit card info just so I can get a free cruise.”²
- 20 • “They are scammers offering free Cruz [sic].”³

21 **CLASS ACTION ALLEGATIONS**

22 19. Plaintiff brings this action on behalf of herself and on behalf of all other persons
23 similarly situated.

24 20. Plaintiff proposes the following Class definition, subject to amendment as
25 appropriate:

26 ¹ <http://westoptele marketers.com/numbers/9163408242>

27 ² *Id.*

28 ³ <http://www.directorywiki.info/us/phone-numbers/424-322-9560/>

1 All persons within the United States who (a) received a non-emergency telephone call;
2 (b) on his or her cellular telephone or residential telephone line; (c) made by or on
3 behalf of Defendant in order to promote its products or services; (d) for whom
4 Defendant had no record of prior express written consent; (e) and such phone call was
5 made with the use of an automatic telephone dialing system and/or artificial or
6 prerecorded voice; (f) at any time in the period that begins four years before the filing
7 of the complaint in this action to the date that class notice is disseminated.

8 21. Plaintiff represents, and is a member of, the proposed Class. Excluded from the
9 proposed Class is Defendant and any entities in which Defendant has a controlling interest,
10 Defendant's agents and employees, any Judge and/or Magistrate Judge to whom this action is
11 assigned and any member of such Judges' staffs and immediate families.

12 22. Plaintiff does not know the exact number of members in the proposed Class, but
13 reasonably believes based on the scale of Defendant's business, and the number of online
14 complaints, that the class is so numerous that individual joinder would be impracticable.

15 23. Plaintiff and all members of the proposed Class have been harmed by the acts of
16 Defendant in the form of multiple involuntary telephone and electrical charges, the aggravation,
17 nuisance, and invasion of privacy that necessarily accompanies the receipt of unsolicited and
18 harassing telephone calls, and violations of their statutory rights.

19 24. The disposition of the claims in a class action will provide substantial benefit to the
20 parties and the Court in avoiding a multiplicity of identical suits. The proposed Class can be
21 identified easily through records maintained by Defendant.

22 25. There are well defined, nearly identical, questions of law and fact affecting all
23 parties. The questions of law and fact involving the class claims predominate over questions which
24 may affect individual members of the proposed Class. Those common question of law and fact
25 include, but are not limited to, the following:

- 26 a. Whether Defendant and/or its agents made telephone calls to class members using
27 an artificial or prerecorded voice without their prior express written consent;
- 28 b. Whether Defendant and/or its agents made telephone calls to class members using
an automatic telephone dialing system;

- c. Whether Defendant's and/or its agents' conduct was knowing and/or willful;
- d. Whether Defendant is liable for damages, and the amount of such damages, and
- e. Whether Defendant should be enjoined from engaging in such conduct in the future.

26. As a person who received numerous and repeated calls on her telephones through the use of an autodialer and artificial or prerecorded voice, without her prior express written consent, Plaintiff asserts claims that are typical of each member of the Class. Plaintiff will fairly and adequately represent and protect the interests of the proposed Class, and has no interests which are antagonistic to any member of the proposed Class.

27. Plaintiff has retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes.

28. A class action is the superior method for the fair and efficient adjudication of this controversy. Class wide relief is essential to compel Defendant to comply with the TCPA. The interest of the members of the proposed Class in individually controlling the prosecution of separate claims against Defendant is small because the statutory damages in an individual action for violation of the TCPA are relatively small. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the calls at issue are all automated and the members of the Class, by definition, did not provide the prior express consent required under the statute to authorize calls to their telephones.

29. Defendant has acted on grounds generally applicable to the proposed Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the proposed Class as a whole appropriate. Moreover, on information and belief, Plaintiff alleges that the TCPA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

CAUSES OF ACTION

FIRST COUNT

KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, et seq.

30. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

31. The foregoing acts and omissions of Defendant and/or its agents constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and members of the proposed Class are entitled to treble damages of up to \$1,500.00 for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and members of the proposed Class are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

34. Plaintiff and members of the proposed Class are also entitled to an award of attorneys' fees and costs.

SECOND COUNT

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, et seq.

35. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully stated herein.

36. The foregoing acts and omissions of Defendant and/or its agents constitute numerous and multiple violations of the TCPA, including but not limited to each of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

37. As a result of Defendant's violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and members of the Class are entitled to an award of \$500.00 in statutory damages for each and every call in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

38. Plaintiff and members of the proposed Class are also entitled to and do seek injunctive relief prohibiting such conduct violating the TCPA by Defendant in the future.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

L. Timothy Fisher (State Bar No. 191626)
Annick M. Persinger (State Bar No. 272996)
Yeremey O. Krivoshey (State Bar No.295032)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Email: ltfisher@bursor.com
apersinger@bursor.com
ykrivoshey@bursor.com

BURSOR & FISHER, P.A.
Scott A. Bursor (State Bar No. 276006)
888 Seventh Avenue
New York, NY 10019
Telephone: (212) 989-9113
Facsimile: (212) 989-9163
E-Mail: scott@bursor.com

Attorneys for Plaintiff