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7 UNITED STATES DISTRICT COURT
 8 FOR THE DISTRICT ARIZONA
 9 PHOENIX DIVISION

11 Jason Crews,

12 Plaintiff,

13 vs.

14 Alleviate Tax, LLC,

15 and

16 George Baseluos;

17 Defendants.

Case No.: **CV23-01264-PHX-JFM**

First Amended Complaint for Violations
 of:

1. NEGLIGENT VIOLATIONS OF
 THE TELEPHONE CONSUMER
 PROTECTION ACT [47 U.S.C. §227 ET
 SEQ.]
2. WILLFUL VIOLATIONS OF
 THE TELEPHONE CONSUMER
 PROTECTION ACT [47 U.S.C. §227 ET
 SEQ.]

DEMAND FOR JURY TRIAL

1
2 **COMPLAINT**

3 **Preliminary Statement**

4 1. Plaintiff Jason Crews (“Plaintiff”) brings this action under the Telephone
5 Consumer Protection Act (“TCPA”), 47 U.S.C § 227, a federal statute enacted in
6 response to widespread public outrage about the proliferation of intrusive, nuisance
7 calling practices. See *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

8 2. The Defendants in this action Alleviate Tax, LLC and George
9 Baseluos orchestrated placing at least four illegal prerecorded “robocall” to Plaintiff’s
10 telephone number and seven illegal telemarketing calls using an Automated Telephone
11 Dialing System (“ATDS”) to a number assigned to a cellular service which was included
12 on the national Do-Not-Call List.

13 3. Plaintiff never consented to receive such messages.

14 **Parties**

15 4. Plaintiff Jason Crews (“Crews”) is and was a resident of Maricopa County,
16 Arizona at all relevant times, and a resident of this District.

17 5. Defendant Alleviate Tax, LLC (“Alleviate”) doing business as the Consumer
18 Legal Request is a Corporation, incorporated in New York, and in the business of “Mass
19 torts made simple... Camp Lejeune”.

20 6. Defendant George Baseluos (“Baseluos”), a resident of Queens County, New
21 York, was at all times relevant the Chief Marketing Officer of Alleviate Tax, LLC and
22 directed the illegal calls complained of herein.

23 **Jurisdiction & Venue**

24 7. The Court has federal question subject matter jurisdiction over these TCPA
25 claims: *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740 (2012).

1 8. The Court has specific personal jurisdiction over the Defendants because they
2 have repeatedly placed calls to Arizona residents, including the Plaintiff. Defendants
3 purposely placed calls to Arizona residents.

4 9. The venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial
5 part of the events or omissions giving rise to the claim occurred in this District, as the calls
6 to Plaintiff were placed into this District.

7 **The Telephone Consumer Protection Act**

8 8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
9 automated calling industry. In so doing, Congress recognized that “[u]nrestricted
10 telemarketing . . . can be an intrusive invasion of privacy[.]”: Telephone Consumer
11 Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. §
12 227).

13 9. Under the TCPA, an individuals candidate such as Baseluos may be
14 personally liable for the acts alleged in this Complaint pursuant to 47 U.S.C. § 217 of the
15 TCPA, which reads, inter alia:

16
17 [T]he act, omission, or failure of any officer, agent, or other person acting for or
18 employed by any common carrier or user, acting within the scope of his
19 employment, Case 2:22-cv-02724-ER Document 1 Filed 07/11/22 Page 2 of 11 3
20 shall in every case be also deemed to be the act, omission, or failure of such carrier
or user as well as of that person. 47 U.S.C. § 217 (emphasis added).

21 10. When considering individual liability under the TCPA, other Courts have
22 agreed that an officer or individual involved in the telemarketing at issue may be
23 personally liable under the TCPA. See, e.g., *Jackson Five Star Catering, Inc. v. Beason*,
24 2013 U.S. Dist. LEXIS 159985, *10 (E.D. Mich. Nov. 8, 2013) (“[M]any courts have
25 held that corporate actors can be individually liable for violating the TCPA where they
26 had direct, personal participation in or personally authorized the conduct found to have
27 violated the statute.”) (cleaned up) and *Maryland v. Universal Elections*, 787 F. Supp.

1 2d 408, 415-16 (D. Md. 2011) (“If an individual acting on behalf of a corporation could
2 avoid individual liability, the TCPA would lose much of its force.”).

3 11. Baseluos personally participated in the complained-of actions by personally
4 directing and authorizing the scripting and selecting of calls to be made, selecting, and
5 orchestrating the calling strategy, including by choosing to use pre-recorded calls.

6 12. Capozzoli personally participated in the complained-of actions by personally
7 directing and authorizing the scripting and selecting of calls to be made, selecting, and
8 orchestrating the calling strategy, including by choosing to use pre-recorded calls.

9
10 **Factual Allegations**

11 13. To promote their services Defendants relied on prerecorded “robocalls.”

12 14. To promote their services Defendants also relied on the use of ATDS systems.

13 15. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

14 16. The phone number (602) 295-XXXX (“Cell Number”) belongs to Plaintiff.

15 17. The Cell Number has been on the Do-Not-Call registry since November 7,
16 2006.

17 18. Despite this registration, Defendants placed the calls summarized in the
18 following table with an Automated Telephone Dialing Systems (“ATDS”).

call-date	call-time	pre-recorded	ATDS
6/12/23	8:53:00 AM	TRUE	TRUE
6/20/23	1:35:00 AM	TRUE	TRUE
6/26/23	8:44:00 AM	TRUE	TRUE
7/3/23	2:03:00 PM	TRUE	TRUE

19
20
21
22
23 19. The Cell Number is assigned to a cellular phone used exclusively for personal
24 residential purposes.

25 20. Plaintiff did not consent to receive prerecorded or automated messages to his
26 Cell Number.

27 21. Plaintiff did not consent to receive telephone calls via ATDS.

1 22. The Cell Number is not associated with a business.

2 Calls to Plaintiff

3 23. Plaintiff had no prior business relationship with Defendants.

4 24. On or about July 3, 2023, at 2:03 pm, Plaintiff received a call with blocked
5 callerID.

6 25. This call played a message with a pre-recorded voice.

7 26. The message advertised past due tax relief services and to call (888) 425-
8 3183.

9 27. In order to ascertain the identity of entity responsible for this call on or about
10 July 3, 2023.

11 28. Plaintiff spoke with an individual who identified themselves as Ash Sarlak
12 (“Sarlak”).

13 29. Sarlak claimed to represent Defendant Alleviate.

14 30. Plaintiff asked to be placed on Defendant’s internal do-not-call list, and Sarlak
15 said he would do so.

16 31. Plaintiff asked to be sent a copy of Defendant’s internal do-not-call policy.

17 32. Sarlak said he was unaware of any such policy and that they did not have any
18 such policy.

19 33. On or about July 3, 2023, sent an email to customerservice@alleviatetax.com,
20 support@alleviatetax.com, and george@paracletelawoffice.com requesting any evidence
21 of express consent to call Plaintiff with a prerecorded or automated voice and a ATDS.

22 34. On July 5, 2023, Plaintiff received a response from an email address
23 erinp@alleviatetax.com and an individual named Erin Peacock (“Peacock”), Director of
24 Operations, Alleviate Tax.

25 35. Peacock did not provide evidence of prior express consent.

26 36. Plaintiff avers and therefor believes this is because no prior express consent
27 exists.

Defendants' Use of an ATDS

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2 37. The calls were conducted using an Automatic Telephone Dialing System
3 (ATDS). As the Supreme Court recently clarified, the key feature of an ATDS is the
4 capacity to store numbers to be called using a random or sequential number generator or
5 to produce numbers to be called using a random or sequential number generator:
6 *Facebook, Inc. v. Duguid*, 141 S. Ct. 1163, 1167 (2021).

7 38. The Third Circuit recently clarified that “Congress envisioned a broad
8 understanding of ‘equipment’” that constitutes an ATDS. It also clarified that the analysis
9 of whether an ATDS was used in violation of the TCPA centers around “whether the
10 Defendants employ[s] [ATDS] capacities to make automated calls”: *Panzarella v.*
11 *Navient Sols., Inc.*, 37 F.4th 867, 873, 878 (3d Cir. 2022). In so doing, it held that
12 Congress intended to “ban all autodialed calls” because Congress “found autodialer
13 technology to be uniquely harmful”: *Id.* at 879 (cleaned up).

14 39. In enacting the ATDS prohibition, the Third Circuit cited favorably to
15 Congressional understanding “that telemarketers could transform ordinary computers into
16 autodialers through minor and inexpensive modifications,” including by “relying on
17 computerized databases containing telephone numbers during their dialing campaigns”:
18 *Id.* at 880 (cleaned up). The Third Circuit held that, in passing the TCPA’s ATDS
19 prohibition, Congress intended to remedy the problems caused by callers using computer
20 software to dial numbers randomly or sequentially from a list or database: *Id.*

21 40. The system(s) that Defendants used to place the calls to Plaintiff is/are an
22 ATDS because it would be illogical to dial a number manually, have Plaintiff answer the
23 phone, and only then connect Plaintiff to a human being.

24 41. Audible pauses, clicks, and beeps are hallmark indicia of ATDS systems. This
25 supports the inference that Defendants used an ATDS, such as one that “use[s] a random
26 [or sequential] number generator to determine the order in which to pick phone numbers
27 from a pre-produced list”: *Facebook*, 141 S. Ct. at 1171 n.7.

1 42. Other courts have held, post-Facebook, that allegations similar to those herein
2 of the absence of a relationship between the parties, and the random nature of the
3 automation device (such as the ability to randomly generate caller ID numbers), are all
4 indicia of use of a random or sequential dialing device. This gives rise to the inference at
5 the pleadings stage that an ATDS was used to make the calls: *Camunas v. Nat'l*
6 *Republican Senatorial Comm.*, No. 21-1005, 2021 U.S. Dist. LEXIS 100125 at *11 (E.D.
7 Pa. May 26, 2021).

8 43. No facts exist here to support the conclusion that Defendants was calling from
9 a curated list of his past customers. In contrast to a company that dials calls en masse to
10 multiple individuals from a list of telephone numbers (as here), a company that calls its
11 existing customers utilizing an imported customer list does not place calls using an
12 ATDS. Such calling uses a database targeting existing customers' information rather than
13 computer-generated tables or lists of individuals to be called: *Panzarella*, 37 F.4th at
14 881–882.

15 44. Plaintiff is ignorant of the exact process by which the system(s) used by
16 Defendants operates other than by drawing the reasonable inference and alleging that the
17 system(s) stores or produces telephone numbers randomly or possibly sequentially based
18 on the facts ascertainable from the calls Plaintiff received, as outlined above. Indeed, as
19 at least one district court explained, “The newly clarified definition of an ATDS is more
20 relevant to a summary judgment motion than at the pleading stage”: *Gross v. GG Homes,*
21 *Inc.*, No. 3:21-cv-00271-DMS-BGS, 2021 WL 2863623, at *7 (S.D. Cal. July 8, 2021);
22 accord *Miles v. Mediacredit, Inc.*, No. 4:20-cv- 01186-JAR, 2021 WL 2949565 (E.D. Mo.
23 July 14, 2021).

24 **Defendants' Conduct Was Knowing and Willing**

25 45. Defendants knew his actions were in violation of the TCPA and willfully
26 continued his conduct.

27 //

1 **The TCPA Prohibits All Automated Calls to Protected Numbers**

2 46. The TCPA makes it unlawful "to make any call (other than a call made for
3 emergency purposes or made with the prior express consent of the called party) using an
4 automated telephone dialing system or an artificial or prerecorded voice ... to any
5 telephone number assigned to a ... paging service, cellular telephone service, specialized
6 mobile radio service, or other radio common carrier service, or any service for which the
7 party is charged for the call": 47 U.S.C. § 227 (b)(1)(A)(iii).

8 47. Congress singled out these services for special protection because Congress
9 realized their special importance in terms of consumer privacy (as is the case with
10 cellular phones): *Barr v. Am. Ass'n of Pol. Consultants Inc.*, 140 S. Ct. 2335, 2356,
11 (2020) (Gorsuch, J. & Thomas, concurring in part and dissenting in part).

12 48. According to findings by the Federal Communications Commission ("FCC"),
13 which is the agency Congress vested with the authority to issue regulations implementing
14 the TCPA, such messages are prohibited because, as Congress found, automated or
15 prerecorded messages are a greater nuisance and invasion of privacy than live ones, are
16 costly, and are inconvenient.

17 49. The TCPA provides a private cause of action to persons who receive calls in
18 violation of 47 U.S.C. § 227(b)(1)(A). 47 U.S.C. § 227(b)(1)(3).

19 50. These causes of action apply to users of any of four protected services (pager,
20 cellular, specialized mobile radio [i.e., radio telephony locator beacon or dispatch
21 system], or another radio common carrier service [i.e., ship-to-shore or air-to-ground]), or
22 any service, including residential, VoIP, and landline services, for which the called party
23 is charged: *Lynn, Monarch Recovery Mgmt. Inc.*, 953 F. Supp. 2d 612, 623, (D. Md.
24 2013).

25 51. "Non-Emergency pre-recorded voice or autodialed calls to the destinations
26 enumerated in 47 U.S.C. § 227(b)(1)(A) are permissible only with the prior express
27 consent of the called party."

1 52. U.S.C. § 227(c)(2) states, "No person or entity shall initiate any telephone
2 solicitation to ... [a] residential telephone subscriber who has registered his or her
3 telephone number on the National Do-Not-Call Registry of persons who do not wish to
4 receive telephone solicitations that is maintained by the Federal Government" and defines
5 "telephone solicitation" as "the initiation of a telephone call or message for the purpose of
6 encouraging the purchase or rental of, or investment in, property, goods, or services,
7 which is transmitted to any person...": U.S.C. § 227(f)(15).

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

12 54. In 2013, the FCC required prior express written consent for all autodialed or
13 prerecorded telemarketing calls ("robocalls") to wireless numbers and residential lines.
14 Specifically, it ordered:

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

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

25 56. 47 C.F.R. § 64.1200 extends 47 U.S.C. § 227 and establishes several delivery
26 restrictions. It states, "No person or entity may ... [e]xcept as provided ... initiate any
27

1 telephone call ... using an automatic telephone dialing system or an artificial or
2 prerecorded voice."

3 57. 47 C.F.R. § 64.1200(a)(1) specifically protects the following: "emergency
4 telephone line," "guest room or patient room of a hospital, health care facility, elderly
5 home, or similar establishment," and/or "cellular telephone service." 47 C.F.R. §
6 64.1200(a)(2) further prohibits entities from "initiat[ing], or caus[ing]to be initiated, any
7 telephone call that includes or introduces an advertisement or constitutes telemarketing,
8 using an automatic telephone dialing system or an artificial or prerecorded voice, to any
9 of the lines or telephone numbers described... "

10 58. The National Do-Not-Call Registry allows consumers to register their
11 telephone numbers and thereby indicate their desire to not receive telephone solicitations
12 at those numbers: 47 C.F.R. § 64.1200(c)(2).

13 59. A listing on the Registry "must be honored indefinitely, or until the
14 registration is cancelled by the consumer or the telephone number is removed by the
15 database administrator": *Id.*

16 60. The TCPA and implementing regulations prohibit the initiation of telephone
17 solicitations to residential telephone subscribers whose numbers are on the Registry and
18 provide a private right of action against any entity making those calls or "on whose
19 behalf" such calls are promoted: 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

20 61. 47 C.F.R. § 64.1200(d) states, "No person or entity shall initiate any call for
21 telemarketing purposes to a residential telephone subscriber unless such person or entity
22 has instituted procedures for maintaining a list of persons who request not to receive
23 telemarketing calls made by or on behalf of that person or entity." It goes on to establish
24 specific "minimum standards":

25 (1) "Persons or entities making calls for telemarketing purposes must have a
26 written policy, available upon demand..."

1 (2) "[P]ersonnel engaged in any aspect of telemarketing must be informed and
2 trained in the existence and use of the do-not-call list."

3 (3) "If a person or entity making a call for telemarketing purposes ... receives a
4 request ... not to receive calls from that person or entity, the person or entity must record
5 the request and place the subscriber's name ... and telephone number on the do-not-call
6 list at the time the request is made ... must honor a residential subscriber's do-not-call
7 request within a reasonable time from the date such request is made."

8 (4) "A person or entity making a call for telemarketing purposes must provide the
9 called party with the name of the individual caller, the name of the person or entity on
10 whose behalf the call is being made, and a telephone number or address at which the
11 person or entity may be contacted."

12 (5) "A person or entity making calls for telemarketing purposes must maintain a
13 record of a consumer's request not to receive further telemarketing calls."

14 **Claims**

15 **Count One**

16 62. Plaintiff incorporates the foregoing allegations as fully set forth herein.

17 63. The foregoing acts and omissions of Defendants and/or their affiliates,
18 agents, and/or other persons or entities acting on Defendants' behalf constitute violations
19 of the TCPA, 47 U.S.C. § 227, by sending calls, except for emergency purposes, to
20 Plaintiff's telephone which is assigned to a cellular telephone service using an ATDS.

21 64. As a result of their unlawful conduct, Defendants invaded Plaintiff's
22 personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. §
23 227(b)(3)(B), entitling him to recover \$500 in civil fines for each violation and an
24 injunction requiring Defendants to stop his illegal calling campaign.

25 65. Plaintiff is also entitled to and does seek injunctive relief prohibiting
26 Defendants and/or his affiliates, agents, and/or other persons or entities acting on
27 Defendants' behalf from violating the TCPA, 47 U.S.C. § 227, by making calls or

1 sending messages, except for emergency purposes, to any number using an artificial or
2 prerecorded voice in the future.

3 66. Plaintiff is entitled to an award up to \$1500 in damages for each knowing
4 and willful violations of 47 U.S.C. § 227(b)(3)(B)

5 67. Defendants' violations were willful and/or knowing.

6 **Count Two**

7 68. Plaintiff incorporates the foregoing allegations as fully set forth herein.

8 69. Defendants called Plaintiff's private residential telephone number which
9 was registered on the National Do-Not-Call Registry more than thirty-one (31) days prior
10 to the calls, in violation of 47 U.S.C. § 227(c)(3)(F) and 47 C.F.R. § 64.1200(c)(2).

11 70. As a result of their unlawful conduct, Defendants invaded Plaintiff's
12 personal privacy, causing Plaintiff to suffer damages and, under 47 U.S.C. §
13 227(c)(3)(F) entitling him to recover \$500 in civil fines for each violation and an
14 injunction requiring Defendants to stop his illegal calling campaign.

15 71. Plaintiff is entitled to an award up to \$1500 in damages for each knowing
16 and willful violations of 47 U.S.C. § 227(c)(3)(F).

17 72. Defendants' violations were willful and/or knowing.

18 **Relief Sought**

19 WHEREFORE, Plaintiff requests the following relief:

20 A. Injunctive relief prohibiting Defendants from calling telephone numbers using
21 an artificial or prerecorded voice and/or ATDS.

22 B. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself
23 \$500 in damages for each violation or—where such regulations were willfully or
24 knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. §
25 227(b)(3).

26 C. Because of Defendants' violations of the TCPA, Plaintiff seeks for himself
27 \$500 in damages for each violation or—where such regulations were willfully or

1 knowingly violated—up to \$1,500 per violation, pursuant to 47 U.S.C. §
2 227(c)(3).

3 C. Such other relief as the Court deems just and proper.
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6 RESPECTFULLY SUBMITTED on this July 5, 2023.

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9 Jason Crews
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