

## **IT BEGINS: The Very First Class Action Under the New Florida Robocall Bill Has Been Filed—and Its a Doozy**

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One day you'll be at trivia night at your local TCPAWorld.com branded pub and be asked this question:

What poor company was the first to be sued in a class action under Florida's new mini-TCPA?

Answer—Batteries Plus, LLC.

In a new suit filed TODAY a Florida consumer has sued those folks in a class action under the Florida Telephone Solicitation Act, Fla. Stat. § 501.059, as amended by Senate Bill No. 1120. This is believed to be the very first such complaint ever filed leveraging the amendment.

Complaint here: [Cooper Complaint](#).

Ms. Cooper alleges receipt of unwanted text messages pitching the Defendant's products. While such messages likely would not trigger an ATDS claim under the TCPA—unless they were randomly sent, and I'm sure they weren't—under the Florida bill all that is needed is the use of a computer system to automatically determine the sequence of dialing. And that, says Plaintiff, is precisely how Defendant's system works:

"To transmit the above telephonic sales calls, Defendant utilized a computer software system that automatically selected and dialed Plaintiff's and the Class members' telephone numbers."

That might be the first ever rendition of autodialer allegations in a pleading filed under the amended Florida bill.

History is made, I suppose.

Notably, although there is much conjecture about the reach of the Florida bill—facially it applies to all

calls made to anyone from anywhere—Cooper alleged that she “received such calls while residing in and physically present in Florida.” So there will not be any question about Ms. Cooper’s ability to state a claim—although it is unclear to me whether the Wisconsin-based defendant is subject to personal jurisdiction in Florida.

Plaintiff also (wisely) limited her class to Florida residents:

*All persons in Florida who, (1) were sent a telephonic sales call regarding Defendant’s goods and/or services, (2) using the same equipment or type of equipment utilized to call Plaintiff.*

So the era of litigation under Florida 059—as I’ve taken to calling it—has commenced. Make sure that you are not using a dialer that automatically determines the sequence of numbers to be called if you’re reaching out to Florida consumers without express written consent—and that includes some click-to-dial systems, folks.

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