

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

RICHARD MACLEAN and GLOBAL
EDUCATION SERVICES, INC., on behalf
of themselves and all others similarly
situated,

Plaintiffs,

vs.

STELLAR CONCEPTS & DESIGN, INC.
and VOICE MARKETING, INC.,

Defendants.

CLASS ACTION

Case No. 10-2-04301-2 SEA

AMENDED COMPLAINT FOR
DAMAGES, INJUNCTIVE AND
DECLARATORY RELIEF

Plaintiffs RICHARD MACLEAN and GLOBAL EDUCATION SERVICES, INC.,
individually and as class representatives of a Class of similarly situated individuals and entities,
allege as follows:

I. PARTIES, JURISDICTION, VENUE

1.1. Defendant Stellar Concepts & Design, Inc. (Stellar Concepts) is a Florida
corporation with its principal office in Fort Lauderdale, Florida. Stellar Concepts provides
printing, web design and related marketing services.

1.2 Defendant Voice Marketing, Inc. (Voice Marketing) is a Colorado corporation with its principal office in Lake Forest, California. Voice Marketing provides marketing services to businesses, including voice mail messages marketing using a pre-recorded message that is answered by an answering machine, voice mail or person.

1.3. Plaintiff Richard MacLean resides in Seattle, King County, Washington. Plaintiff Global Education Services, Inc. (“GES”) is a non-profit Washington corporation that does business in and whose principal place of business is Seattle, King County, Washington, and Plaintiff MacLean is President of GES. Plaintiff GES is the owner of the telephone on which it receives calls, including that which is the subject of this Complaint.

1.4 The call in question was received by Plaintiff MacLean on Plaintiff GES’s telephone in King County, Washington.

1.5 Venue and Jurisdiction are proper under RCW 4.12.020, RCW 2.08.010, and Washington Constitution Article 4, §6.

II. FACTS

2.1 On September 17, 2009, Defendant Stellar Concepts employed or otherwise contracted with Defendant Voice Marketing to place a call to the telephone line of Plaintiff GES which was answered by Plaintiff MacLean.

2.2. The call consisted of a pre-recorded message delivered by an automatic dialing and announcing device (“ADAD”). The pre-recorded message was for the purpose of commercial solicitation, soliciting Plaintiffs to patronize Defendant Stellar Concepts’ business for services such as web and printing services. Defendants are responsible for making this ADAD call.

2.3. Plaintiffs had not given Defendants permission, express or otherwise, to place the call, nor did Plaintiffs have an established business relationship with Defendants.

2.4. Upon information and belief, Defendant Stellar Concepts employed or otherwise contracted with Defendant Voice Marketing to place numerous substantially similar telephone calls to the telephones of persons and entities in Washington State, including in King County.

2.5. Upon information and belief, Defendants may intend to continue to send pre-recorded messages to the telephones of persons and entities in Washington State.

III. CAUSES OF ACTION

3.1. Plaintiffs reallege the foregoing paragraphs as if fully stated herein. The following causes of action are, to the extent necessary, stated in the alternative.

Count A. Violation of RCW 80.36.400 (Washington State Class)

3.2. Defendants have violated RCW 80.36.400.

3.3. As a result of said conduct, Plaintiffs have sustained damages. Plaintiffs and all members of the Class are entitled to injunctive relief enjoining Defendants' unlawful conduct, as well as incidental statutory or other damages.

Count B. Violation of RCW 19.86 (Washington State Class)

3.4. Under RCW 80.36.400(3), Defendants' violation of RCW 80.36.400 constitutes a violation of RCW 19.86, et seq., the Washington Consumer Protection Act ("CPA").

3.5. As a result of said conduct, Plaintiffs and members of the Class have sustained damages. Under the CPA, Plaintiffs and all members of said Class are entitled to injunctive relief enjoining Defendants' unlawful conduct, as well as incidental and statutory damages and treble that amount as determined by law, and costs of suit and attorney's fees.

**Count C. Declaratory Relief Under The Washington
Declaratory Judgment Act (RCW 7.24.010) (Washington State Class)**

3.6. Defendants used an automated dialing and announcement device to send a pre-recorded message to the telephones of persons and entities in Washington.

3.7. Plaintiffs and the Class are entitled to have their rights, status and legal relations relating to Defendants' use of an automatic dialing and announcing device established by this Court.

IV. CLASS ACTION ALLEGATIONS

4.1. Plaintiffs reallege the foregoing paragraphs as if fully stated herein.

4.2. This class action is brought and may be maintained pursuant to CR 23(b)(2) and

(b)(3). Plaintiffs seek to represent a Class comprised of:

All Washington persons and/or entities who received a pre-recorded telephone message on their telephone from Defendants sent by automatic dialing machine at any time for the period that begins 4 years from the date of the initial Complaint to trial.

4.3. **Numerosity.** On information and belief, the Class is so numerous that joinder of all members is impracticable.

4.4. **Common Questions of Law and Fact.** The questions of law and fact are the same for all Class members, including whether the Defendants' conduct violated RCW 80.36.400.

4.5. **The Plaintiffs' Claims are Typical of the Class.** Plaintiffs' claims are typical of the Class in that they arise from Defendants' repeated violation of RCW 80.36.400, and the CPA as to Plaintiffs and all other class members.

4.6. **The Plaintiffs Will Fairly and Adequately Protect Class.** Plaintiffs will adequately represent and protect the interests of the Class because they have retained competent and experienced counsel and their interests in the litigation are not antagonistic to the other members of the Class.

4.7. **A Class Action is Maintainable Under CR 23(b)(3).** The questions of law and fact common to all members of the Class predominate over questions affecting only individual members of the Class, because all members of the Class were subjected to Defendants' unlawful use of one or more ADADs. The prosecution of separate actions by individual members of the Class against Defendants would create the risk of inconsistent or varying adjudications and incompatible standards of treatment. On information and belief, there are no other pending class actions concerning these issues. A class action is superior to any other available means for the adjudication of this controversy. This action will cause an orderly and expeditious administration of the Class's claims; economies of time, effort and expense will be fostered; and uniformity of decisions will be ensured at the lowest cost and with the least expenditure of judicial resources.

4.8. **A Class Action is Maintainable Under CR 23(b)(2).** Defendants have acted on grounds generally applicable to Plaintiffs and the Class as alleged herein, thereby making appropriate injunctive and declaratory relief, as well as incidental damages, with respect to the Class as a whole.

V. PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs, on behalf of themselves and the Class of similarly situated individuals and/or entities, respectfully request that the Court enter judgment in their favor and in favor of the Class for:

- A. Certification of the Class pursuant to CR 23(b)(2) and CR 23(b)(3);
- B. Granting declaratory, equitable, and/or injunctive relief as permitted by law to ensure that Defendants will not continue to use automatic dialing and announcement devices to send messages to telephone subscribers;
- C. Judgment against Defendants for incidental statutory damages of \$500.00 per legal violation involved in each message sent to Plaintiffs and each member of the Class, and other damages are permitted by law;
- D. Any other or further relief which the Court deems fair and equitable.

DATED this 15th day of December, 2010.

WILLIAMSON & WILLIAMS

By : _____

Rob Williamson, WSBA #11387

Kim Williams, WSBA # 9077

*Attorneys for Plaintiffs and the Proposed
Class*