IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

CASE NO.: 2021-CA-002428

WILLIE TONEY,
individually and on behalf of all
others similarly situated,

Plaintiff,

v.

ADVANTAGE CHRYSLER-DODGE-JEEP, INC.,

Defendant.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

THIS MATTER came before the Court on "Plaintiff's Motion for Class Certification," filed December 9, 2021, and heard on February 2, 2022. The Court, having reviewed the Motion, the Defendant's Opposition to Plaintiff's Motion, and Plaintiff's Reply in Support of the Motion, and having been fully advised in the premises, finds as follows:

RELEVANT FACTS AND PROCEDURAL HISTORY

Plaintiff filed the instant Motion on December 9, 2021, moving this Court: (i) certify a class and subclasses concerning the claims for violation of the Telephone Consumer Protection Act; (ii)) designate Plaintiff as class representative; and (iii) designate Plaintiff's counsel as class counsel.[1] In his Complaint, filed September 4, 2021, Plaintiff alleges that Defendant, a car dealership, hired a marketing company to send prerecorded, telephonic, advertising messages to

[1] The Court notes that Plaintiff initially sought relief in the Middle District of Florida, but that court denied his motion to certify class, citing that Plaintiff had no Article III standing for the receipt of a single ringless voicemail. *See Toney v. Advantage Chrysler-Dodge-Jeep, Inc.*, 6:20-cv-182-WWB-EJK (M.D. Fla. Sep. 1, 2021).

many individuals without first obtaining their written consent as required under the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA"). These messages came in the form of voicemails that did not ring the individual's phone.[2] Plaintiff specifically alleged he received one such prerecorded voicemail marketing message on or about November 1, 2019, which caused him "actual harm, including invasion of his privacy, aggravation, and annoyance." (Pl. Comp. ¶ 20).

Defendant, filed its Opposition to Plaintiff's Motion for Class Certification, arguing: (1) Plaintiff lacks standing where Plaintiff filed to establish (i) a concrete, distinct and palpable injury in fact, (ii) a causal connection between the alleged conduct and the injury, and (iii) a substantial likelihood that the relief requested will remedy the injury in fact; and (2) Plaintiff has not met the requirements of Rules 1.220(a) and 1.220(b) of the Florida Rules of Civil Procedure. The Court held a hearing on Plaintiff's Motion on February 2, 2022, heard arguments from both parties, and took the matter under advisement. This Order follows.

ANALYSIS AND RULING

"A threshold inquiry in a motion for class certification is whether the class representative has standing to represent the putative class members." *Sosa v. Safeway Premium Finance Co.*, 73 So. 3d 91, 116 (Fla. 2011). In order to satisfy this standing requirement, "the class representative must illustrate that a case or controversy exists between him or her and the defendant, and that this case or controversy will continue through the existence of the litigation." *Id*. Such case or controversy exists "if a party alleges an actual or legal injury." *Id*. at 117.

[2] The prerecorded voicemail consisted of the following message:

> Hi, it's Buzz York, general manager at Advantage Chrysler Dodge Jeep and Ram in Mt. Dora calling with important information about your vehicle. Please call us as soon as possible to discuss at 352-461-1537. Again, the number is 352-461-1537. Thank you.

(Pl. Comp. ¶ 13).

"An actual injury includes an economic injury for which the relief sought will grant redress," and it "must be distinct and palpable, not abstract or hypothetical." *Id*.; *see also Discount Sleep of Ocala, LLC v. City of Ocala*, 245 So. 3d 842, 849 (Fla. 5th DCA 2018) ("To meet the . . . standing requirement, a plaintiff must have suffered an 'injury in fact' that is 'distinct and palpable'; the injury must be fairly traceable to the challenged action; and the injury must be likely redressable by a favorable decision. The putative class representative must establish that a case or controversy exists between him or her and the defendant that will continue throughout the litigation. A case or controversy exists if a party alleges an actual or legal injury that the relief sought will address." (internal citations omitted)).

In contrast to an actual injury, there is no substantial loss or injury to be compensated for a legal injury. *XTec, Inc. v. Hembree Consulting Svs., Inc.*, 183 F. Supp. 3d 1245, 1271 (S.D. Fla. 2016) (internal quotations omitted) (interpreting Florida law). "In other words, individuals must allege some threatened or actual injury resulting from the putatively illegal action." *Olen Properties Corp. v. Moss*, 981 So. 2d 515, 518 (Fla. 4th DCA 2008); *see also Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973) ("Although the law of standing has been greatly changed in the last 10 years, we have steadfastly adhered to the requirement that, at least in the absence of a statute expressly conferring standing, federal plaintiffs must allege some threatened or actual injury resulting from the putatively illegal action before a federal court may assume jurisdiction." (internal citations omitted)).

In addition to standing, Florida Rule of Civil Procedure 1.220(a) requires that before certifying a class, a court must find that:

> (1) the members of the class are so numerous that separate joinder of each member is impracticable, (2) the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class, (3) the claim or defense of the

> representative party is typical of the claim or defense of each member of the class, and (4) the representative party can fairly and adequately protect and represent the interests of each member of the class.

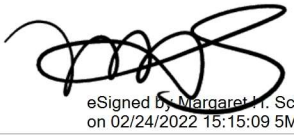
Finally, the determination to certify a class is within the sound discretion of the trial court. *Engle v. Liggett Group, Inc.*, 945 So. 2d 1246, 1267 (Fla. 2006).

Here, Plaintiff alleges an injury that is purely legal – that is, Defendant violated the TCPA by not acquiring the requisite consent to make marketing calls to Plaintiff. Specifically, Plaintiff alleges that he, and others like him, received a single, ringless (as confirmed at the hearing on February 2, 2022) prerecorded voicemail message on a cellular phone, which he claims resulted in actual harm, including invasion of his privacy, aggravation, and annoyance. The Court fails to see how Plaintiff has demonstrated any actual, redressable injury that resulted from a single, ringless call that resulted in a voicemail. This is not an injury that is distinct or palpable, as contemplated to demonstrate standing. *See Peregood v. Cosmides*, 663 So. 2d 665, 668 (Fla. 5th DCA 1995).

Plaintiff has failed to make the injury in fact showing necessary to support standing. Further, Plaintiff has failed to satisfy the prerequisites of Rule 1.220(a), Florida Rules of Civil Procedure, to establish that the putative class is so numerous that joinder of all members is impracticable, that there are questions of law or fact that are common to the class, that the claims or defenses are typical of the claims or defenses of the class, or that Plaintiff will fairly and adequately protect the interests of the class. Accordingly, the Court, in its discretion, declines to certify the class.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that "Plaintiff's Motion for Class Certification" is **DENIED.**

DONE AND ORDERED in Chambers, at Kissimmee, Osceola County, Florida, on this 24th day of February, 2022.



eSigned By: Margaret H. Schreiber in 2021 CA 002428 OC
on 02/24/2022 15:15:09 5MVv-gwU

MARGARET H. SCHREIBER
Circuit Court Judge

Copies electronically forwarded to all counsel of record.