

**UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

CASE NO:

DAVID ULERY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

AT&T MOBILITY SERVICES, LLC,

Defendants.

CLASS ACTION COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

Plaintiff, DAVID ULERY (hereinafter “Plaintiff”), brings this class action pursuant to Rule 23 of the Federal Rules of Civil Procedure against Defendant, AT&T MOBILITY SERVICES, LLC (“AT&T”), for its violations of the Telephone Consumer Protection Act, 47 U.S.C. 227 (hereinafter “the TCPA”), and the regulations promulgated thereunder. In support, Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of Defendant in negligently or willfully contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

2. Between approximately July 23, 2020 and continuing through the filing of this Complaint, Plaintiff and each Class member revoked their consent to receive text messages from Defendant by texting “STOP”¹ to Defendant. Thereafter, Defendant sent or caused to be sent informational text messages to Plaintiff and Class Members despite the clear revocation of consent that Plaintiff and each Class Member had expressed. The instant action challenges all post-revocation text messages that were sent by Defendant to Plaintiff and Class Members from approximately July 23, 2020, through the date of filing this class action complaint.

3. “Month after month, unwanted robocalls and texts, both telemarketing and informational, top the list of consumer complaints received by the [FCC].”² The TCPA is designed to protect consumer privacy by, among other things, prohibiting the making of autodialed or prerecorded-voice calls to cell phone numbers and failing to institute appropriate do-not-call procedures. 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(d).

4. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

5. Additionally, the FCC has explicitly stated that the TCPA’s prohibition on automatic telephone dialing systems “encompasses both voice calls and text calls to wireless numbers including, for example, short message service (SMS) calls.” U.S.C.A. Const. Amend. 5; Telephone Consumer Protection Act of 1991, § 3(a), 47 U.S.C. § 227(b)(1)(A)(iii). *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D. Cal. 2010).

1. Or other written words reasonably evidencing an express revocation of consent.
2. *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, ¶ 1 (2015).

6. In enacting the TCPA, Congress intended to give consumers a choice as to how companies may call them and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.

Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s purpose).

7. In an action under the TCPA, a plaintiff must only show that the defendant “called a number assigned to a cellular telephone service using an automatic dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

JURISDICTION AND VENUE

8. This Court has federal question subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

9. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2), because a substantial part of the events or omissions giving rise to the claims in this case occurred in this District, including Defendant’s transmission of the unlawful and unwanted calls to Plaintiff in this District.

10. Plaintiff resides in Pueblo, Colorado, where the subject text messages were received, within the jurisdiction of this Honorable Court.

11. The Court has personal jurisdiction over Defendant because it conducts business in this state, maintain principle places of business in this state, markets its services within this state, employs individuals in this state, and has availed itself to the jurisdiction of this state by placing calls to Plaintiff and Class Members from this state.

PARTIES

12. Plaintiff's domicile is in Pueblo, Colorado.

13. Defendant, AT&T is a Delaware Limited Liability Company and citizen of the state of Georgia, listing its principal address at 1025 Lenox Park Blvd NE, Atlanta, Georgia 30319. AT&T's registered agent in the state of Colorado is listed as C T Corporation System, at 7700 East Arapahoe Road Suite 220, Centennial, Colorado, 80112-1268.

14. AT&T is a national wireless and telephone company that promotes and markets its services throughout the country, and during the relevant time period, sent unsolicited informational text messages to wireless telephone users in violation of the TPCA.

15. Defendant, directly, individually, jointly, and/or in concert with another, or through other persons, entities or agents acting on their behalf, conspired to, agreed to, contributed to, authorized, assisted with, ratified, and/or otherwise caused all of the wrongful acts and omissions, including the dissemination of the unsolicited text messages that are the subject matter of this Complaint.

FACTUAL ALLEGATIONS

16. At all times relevant, Plaintiff, and at all times mentioned herein was, a "person" as defined by 47 U.S.C. § 153 (39).

17. Defendant is authorized to engage in business in the State of Colorado, and at all times mentioned herein was a corporation and "person," as defined by 47 U.S.C. § 153(39).

18. At all times relevant Defendant conducted business in the State of Colorado, within this judicial district.

19. AT&T utilizes bulk text messaging, to send unsolicited text messages, including at least 16 unwanted post revocation text messages to Plaintiff alone beginning on July 23, 2020 and continuing through filing of this Complaint.

20. AT&T created and operated the unsolicited text messages that are the subject of this lawsuit.

21. From April 2020 through approximately June 5, 2020, Plaintiff was employed by Defendant as a customer service representative at one of its locations in Pueblo, Colorado. Plaintiff's employment with Defendant ceased on June 5, 2020.

22. Nearly seven (7) weeks after Plaintiff's employment with Defendant ended, on July 23, 2020, at approximately 6:00 a.m., Defendant sent or caused to be sent to Plaintiff a text message from the following short code number: 148507108.

23. The text message Defendant sent to Plaintiff contained the following message:

ATT Msg: Before you come into work today, ask yourself if you are experiencing any COVID-19 symptoms (such as a fever, chills, cough, shortness of breath, sore throat, etc.) or have been exposed to anyone with COVID-19 within the last 14 days.

If so, DO NOT report to your work location and contact your supervisor or the appropriate attendance number for your location. If you think you may have been exposed to COVID-19, reach out to your health provider immediately.

Text STOP to opt out

24. After receiving this text message, Plaintiff replied "**STOP**" at 7:42 a.m. on July 23, 2020, so that he would no longer receive unwanted text messages from AT&T.

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