

**UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

Civil Action No. 8:22-cv-00748

BRAD M. SMITH, individually,  
and on behalf of all others similarly situated,

Plaintiff,

v.

T-MOBILE USA, INC.  
and JOHN DOES 1-10,

Defendants.

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**CLASS ACTION COMPLAINT**

**NOW COMES** BRAD M. SMITH, individually, and on behalf of all others similarly situated, by and through his undersigned counsel, complaining of T-MOBILE USA, INC. and JOHN DOES 1-10, as follows:

**NATURE OF ACTION**

1. This action seeks redress for Defendant's violations of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 *et seq.*
2. "The primary purpose of the TCPA was to protect individuals from the harassment, invasion of privacy, inconvenience, nuisance, and other harms associated with unsolicited, automated calls." *Parchman v. SLM Corp.*, 896 F.3d 728, 738-39 (6th

Cir. 2018) *citing* Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2, 105 Stat. 2394 (1991).

3. As the Supreme Court recently observed, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

### **JURISDICTION AND VENUE**

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 as the TCPA is a federal statute.

5. Venue in this district is proper under 28 U.S.C. § 1391(b)(2) as a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this judicial district.

### **PARTIES**

6. BRAD M. SMITH (“Plaintiff”) is a natural person, over 18-years-of-age, who at all times relevant resided in New Port Richey, Florida.

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

8. T-MOBILE USA, INC. (“Defendant”) is a nationally recognized wireless service provider.

9. Defendant maintains its principal place of business in Bellevue, Washington.

10. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

11. JOHN DOES 1-10 are third party vendors/agents that Defendant engages to place outbound calls on its behalf for various purposes. The identities of JOHN DOES 1-10 are unknown to Plaintiff at this time and will be ascertained through discovery.

### **FACTUAL ALLEGATIONS**

12. At all times relevant, Plaintiff was the sole operator, possessor, and subscriber of the cellular telephone number ending in 8567 (Plaintiff's personal cellular phone number).

13. At all times relevant, Plaintiff's number ending in 8567 was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

14. At all times relevant, Plaintiff was financially responsible for his cellular telephone service.

15. In February 2022, Defendant started placing calls to Plaintiff's personal cellular phone number in an attempt to collect an alleged debt owed to Defendant by an unknown individual by the name of "Kimberly Hemmerly".

16. On February 24, 2022, at approximately 9:44 a.m. EST, Plaintiff answered a call from Defendant.

17. As soon as Plaintiff answered the call, he was met with an artificial or pre-recorded voice greeting stating "this call is for Kimberly Hemmerly....."

18. It was clear to Plaintiff that a live person was not on the call as the greeting was monotone and Plaintiff would not get a response when he spoke.

19. The greeting further provided Plaintiff with the option to press “0” to speak to a live representative.

20. Plaintiff pressed 0 and spoke to a live representative.

21. During this call, Plaintiff (1) notified Defendant’s representative that he is not “Kimberly Hemmerly”; (2) advised Defendant’s representative that Defendant was calling a wrong number; and (3) requested that Defendant cease its misguided calls.

22. Despite Plaintiff’s request that Defendant cease its misguided calls, Defendant continued to pound Plaintiff with calls that utilized an artificial or prerecorded voice (“robocalls”) in an effort to contact “Kimberly Hemmerly.”

23. On March 10, 2022, at approximately 10:45 a.m. EST, Plaintiff answered another robocall from Defendant.

24. Plaintiff was again greeted with an artificial or pre-recorded voice stating “this call is for Kimberly Hemmerly....”

25. Plaintiff again pressed “0” and spoke with a representative named “Dell.”

26. During this call, Plaintiff again (1) notified Defendant that it is contacting the wrong party; (2) advised Defendant that he does not know who “Kimberly Hemmerly” is; and (3) requested that Defendant cease its misguided calls.

27. Plaintiff’s request that the misguided robocalls cease fell on deaf ears again and Defendant continued placing robocalls to Plaintiff’s cellular phone.

28. In total, Defendant placed no less than fifty (50) misguided robocalls to Plaintiff's cellular phone number, including phone calls from the phone number (844) 796-0648.

29. Upon information and belief, the robocalls referenced herein were placed by John Does 1-10 on behalf of Defendant.

30. At no point in time did Plaintiff provide his personal cellular phone number to Defendant.

### **DAMAGES**

32. Plaintiff values his time, privacy, and solitude.

33. Defendant's misguided robocalls have invaded Plaintiff's privacy, disrupted Plaintiff's everyday life, and have caused Plaintiff actual harm, including: aggravation that accompanies unwanted robocalls, increased risk of personal injury resulting from the distraction caused by the misguided robocalls, wear and tear to Plaintiff's cellular phone, temporary loss of use of Plaintiff's cellular phone, loss of battery charge, loss of concentration, mental anguish, nuisance, the per-kilowatt electricity costs required to recharge Plaintiff's cellular phone as a result of increased usage of Plaintiff's cellular phone, and wasting Plaintiff's time.

34. Moreover, each time Defendant placed a robocall to Plaintiff cellular phone number, Defendant occupied Plaintiff's cellular phone number such that Plaintiff was unable to receive other phone calls or otherwise utilize his cellular phone while his phone was ringing.

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