

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

KEVIN FRYE

DEMAND FOR JURY TRIAL

Plaintiff

v.

T-MOBILE USA, INC.

Defendant

_____ /

VERIFIED COMPLAINT

COMES NOW the Plaintiffs, Kevin Frye, through undersigned counsel, (herein referred to as “Plaintiff” or “Frye”) and states in support as follows:

NATURE OF THE ACTION

This is an action for COUNT I: VIOLATION OF THE FEDERAL COMMUNICATIONS ACT, COUNT II: NEGLIGENCE, COUNT III: GROSS NEGLIGENCE, COUNT IV: NEGLIGENT HIRING, RETENTION AND SUPERVISION, COUNT V: VIOLATIONS OF THE COMPUTER FRAUD AND ABUSE ACT.

INTRODUCTION

1. This action arises out of T-Mobile USA, Inc.’s (hereinafter “T-Mobile”) systemic and repeated failures to protect and safeguard its customers’ highly sensitive personal and

financial information against common, widely reported, and foreseeable attempts to illegally obtain such information.

2. As a result of T-Mobile's misconduct as alleged herein, including their gross negligence in protecting customer information, its negligent hiring and supervision of customer support personnel and its violations of federal and state laws designed to protect wireless service consumers, Plaintiff lost 1.91130741 bitcoin ("BTC"), with a current estimated value in excess of \$87,000 due to an account takeover scheme (also known as a "SIM-swap") which could not have occurred but for Defendant's intentional actions and negligent practices, as well as their repeated failure to adhere to federal and state laws.

PARTIES

3. Plaintiff Kevin Frye is a resident of Broward, County, Florida.

4. Defendant is a Delaware corporation with a principal place of business in the State of Washington.

JURISDICTION AND VENUE

5. This Court has jurisdiction of Plaintiff's claims pursuant to 28 U.S.C. §§1331, as this case arises under federal statutes, such as the Federal Communications Act ("FCA") at 47 U.S.C. §222, the Stored Communications Act ("SCA") at 18 U.S.C. §2701, and the Computer Fraud and Abuse Act ("CFAA") at 18 U.S.C. §1030.

6. Furthermore, the Court has jurisdiction under 28 U.S.C. §1332 in that the amount in controversy exceeds \$75,000.00, inclusive of attorney fees, costs, and statutory interest, and Plaintiff and Defendant are citizens of different states.

7. Venue is proper in this court as the events relevant to this action occurred in the County of Broward, which is located in the United States District Court for the Southern District of Florida.

8. Pursuant to the Court's supplemental jurisdiction under 28 U.S.C. §1367, it may entertain the state law claims as they are derived from a common nucleus of operative facts.

9. The Defendant has established minimum contacts within Florida subjecting them to jurisdiction herein.

10. Plaintiff Frye entered into a contract with Metro by T-Mobile (hereinafter "T-Mobile") in approximately 2013.¹

11. Defendant T-Mobile provided their services in Broward County, Florida and Plaintiff Frye utilized cell towers operated by the Defendant in Broward County, Florida.

12. T-Mobile, by operating, conducting, engaging in, or carrying on a business venture in the State of Florida, T-Mobile availed itself to the personal jurisdiction in the State of Florida, pursuant to section 48.193(1)(a), Florida Statutes.

13. T-Mobile availed itself to the personal jurisdiction of the State of Florida by soliciting business within the State, pursuant to section 48.193(1)(f)(1), Florida Statutes.

¹ In 2012, T-Mobile merged with and acquired Metro.

14. T-Mobile availed itself to personal jurisdiction in the State of Florida by engaging in substantial business activity within the state, pursuant to Section 48.193(2), Florida Statutes.

15. T-Mobile's actual interactions establish a physical presence within the State of Florida. The commercial quality and interaction with businesses and individuals within the State of Florida establish a "plus" factor to establish sufficient minimum contacts. Cf. Roblor Mktg. Group, Inc. v. Gps Indus., Inc., 645 F. Supp. 2d 1130 (S.D. Fla. 2009).

16. The plaintiff's claims all arise out of or relate to the defendant's contacts with the forum thus satisfying the Fourteenth Amendment's Due Process Clause.

17. All conditions precedent to this action have been met through performance, or otherwise.

18. Plaintiff has retained the undersigned law firm to represent it in this action and is obligated to pay the firm a reasonable fee for its services.

GENERAL BACKGROUND

19. T-Mobile markets and sells wireless cellular phone service through standardized wireless service plans via various retail locations, online sales, and over the telephone.

20. T-Mobile has approximately 1,015 stores in Florida and approximately 119 stores in South Florida, including Fort Lauderdale.

21. The Defendant has a substantial advertising budget in Florida where it

estimated they spend millions annually marketing their services to residents of South Florida.

22. T-Mobile maintains accounts for its wireless customers, enabling them to access information about the services they purchase from T-Mobile.

23. It is widely recognized and has been widely publicized that mishandling of customer wireless accounts, including, but not limited to, allowing unauthorized access, can facilitate identity theft and related consumer harm.

24. Numerous instances of mishandling of customer account information have occurred at T-Mobile.

25. As one of the nation's largest wireless carriers, T-Mobile's operations must comply with various federal and state statutes, including (but not limited to) the Federal Communications Act ("FCA") 47 U.S.C. §222.

26. The FCA obligates T-Mobile to protect the "confidential proprietary information of [its] customers" and "customer proprietary network information" (commonly referred to as "CPI" and "CPNI", respectively). See 47 U.S.C. §222(a), (c).

27. The Federal Communications Commission ("FCC") has promulgated rules to implement Section 222 of the FCA "to ensure that telecommunications carriers establish effective safeguards to protect against unauthorized use or disclosure of CPNI." 1998 CPNI Order, 13 FCC Rcd. at 8195 ¶193; see also 47 C.F.R. §64.2001 *et seq.* ("CPNI Rules").

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