

proposed nationwide classes of other persons who received illegal telemarketing calls from or on behalf of the Defendant.

5. A class action is the best means of obtaining redress for the Defendant's wide scale illegal telemarketing and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

Parties

6. Plaintiff Dan Boger is a resident of the state of Maryland and this District.

7. Defendant Citrix Systems, Inc. is a corporation organized in Delaware with its principal place of business in Florida, and conducts business in this District, including through the making of telemarketing calls, as it did with the Plaintiff.

Jurisdiction & Venue

8. The Court has federal question subject matter jurisdiction over these TCPA claims. *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

9. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claim occurred in this District as the telemarketing calls that gave rise to the Plaintiff's claims occurred here.

The Telephone Consumer Protection Act

10. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that "[u]nrestricted telemarketing ... can be an intrusive invasion of privacy [.]" Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

The TCPA Prohibits Automated Telemarketing Calls

11. The TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” *See* 47 U.S.C. § 227(b)(1)(A)(iii). The TCPA provides a private cause of action to persons who receive calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

12. According to findings by the Federal Communication Commission (“FCC”), the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient.

13. The FCC also recognized that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.” *In re Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-278, Report and Order, 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

14. In 2013, the FCC required prior express written consent for all autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers and residential lines. Specifically, it ordered that:

[A] consumer’s written consent to receive telemarketing robocalls must be signed and be sufficient to show that the consumer: (1) received “clear and conspicuous disclosure” of the consequences of providing the requested consent, i.e., that the consumer will receive future calls that deliver prerecorded messages by or on behalf of a specific seller; and (2) having received this information, agrees unambiguously to receive such calls at a telephone number the consumer designates.[] In addition, the written agreement must

be obtained “without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service.”]

In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991,
27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

The TCPA’s Internal Do Not Call List Requirements

15. The TCPA implementing regulations prohibit any company from initiating any telemarketing call unless the company has implemented internal procedures for maintaining a list of persons who request not to be called by the entity. 47 C.F.R. 64.1200(d). Such internal procedures must meet certain minimum requirements to allow the entity to initiate telemarketing calls. 47 C.F.R. 64.1200(d)(1)-(6).

16. This includes the requirements that:

- “Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list” (47 C.F.R. 64.1200(d)(1));
- “Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list” (47 C.F.R. 64.1200(d)(2));
- Persons or entities making telemarketing calls must honor do-not-call requests within a reasonable time, not to exceed thirty days, from the date such request is made (47 C.F.R. 64.1200(d)(3));
- “A person or entity making calls for telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.” (47 C.F.R. 64.1200(d)(6)).

17. Pursuant to 47 C.F.R. 64.1200(e), the rules set forth above in 47 C.F.R. 64.1200(d) are “applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers....”

Factual Allegations

18. Citrix sells software and related products and services for workplace productivity.

19. To generate business through sales, Citrix relies on telemarketing.

20. One of the telemarketing strategies used by Citrix involves the use of an automatic telephone dialing system (“ATDS”) to solicit customers through the use of a predictive dialer.

21. Citrix engages in use of this equipment because it allows for thousands of automated calls to be placed at one time, but its telemarketing representatives, who are paid by the hour, only talk to individuals who pick up the telephone.

22. Through this method, Citrix shifts the burden of wasted time to the consumers it calls with unsolicited messages.

Calls to Mr. Boger

23. Mr. Boger is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

24. Mr. Boger’s telephone number, (703) 328-XXXX, is assigned to a cellular telephone service.

25. Mr. Boger received five automated calls from Citrix to that number.

26. On September 4 and 10, 2015, Citrix placed automated calls to Mr. Boger’s cellular telephone number, (703) 328-XXXX. The caller each time was “Dillon” at “Citrix” and on each call he proceeded to promote Citrix products and services.

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