

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DAVID JAMES FISTER, on behalf of
themselves and others similarly situated,

Plaintiff,

v.

MASSCHUSETTS INSTITUTE OF
TECHNOLOGY, a Massachusetts
corporation, and EMERITUS INSTITUTE
OF MANAGEMENT PTE. LTD.

Defendants.

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: CIVIL ACTION FILE NO.
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: **COMPLAINT – CLASS ACTION**
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: **JURY TRIAL DEMANDED**
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Plaintiff DAVID JAMES FISTER (hereinafter referred to as “Plaintiff”), individually and on behalf of all others similarly situated, alleges on personal knowledge, investigation of his counsel, and on information and belief, as follows:

NATURE OF ACTION

1. “If robocalls were a disease, they would be an epidemic.” *Rage Against Robocalls*, Consumer Reports (July 28, 2015, 6:00 AM), <https://www.consumerreports.org/cro/magazine/2015/07/rage-against-robocalls/index.htm>. “Robocalls” are the #1 consumer complaint in America today.

2. Even as far back as 2012, the Pew Research Center reported 69 percent of cellular users who use text messaging receive unwanted text message spam, with 25 percent of them receiving it on a weekly basis. Jan Lauren Boyles and Lee Rainie, *Mobile Phone Problems*, Pew Research Center (Aug. 2, 2012), <http://www.pewinternet.org/2012/08/02/mobile-phone-problems>.

3. Robocalls, including text messages, have only increased since the 2012 study. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (statement of FCC Chairman).

4. “The FTC receives more complaints about unwanted calls than all other complaints combined.” Comment of the Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the TCPA of 1991, Notice of Proposed Rulemaking*, CG Docket No. 02-278, at p. 2; FCC 16-57 (June 6, 2016), available at https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf.

5. This case involves a campaign by Defendants MASSACHUSETTS INSTITUTE OF TECHNOLOGY (“MIT”) and EMERITUS INSTITUTE OF MANAGEMENT PTE, LTD. (“EMERITUS”) to market educational programs through the use of automated text messages in plain violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (hereinafter referred to as the “TCPA”).

6. By using an automated telephone dialing system to send thousands of automated telemarketing text messages without first obtaining the prior express written consent of recipients, the defendants violated the TCPA. By further disregarding wireless telephone users’ request that Defendants “Stop” such telemarketing text messages, the defendants further violated the TCPA.

PARTIES

7. Plaintiff David Fister is, and at all times mentioned herein was, an individual citizen of the State of Florida.

8. Defendant Massachusetts Institute of Technology (“MIT”) is a corporation organized under the laws of the Commonwealth of Massachusetts with its principal place of business located at 77 Massachusetts Avenue in Cambridge, Massachusetts (02139).

9. Defendant Emeritus Institute of Management PTE. LTD. (“EMERITUS”) is a foreign entity with its principal place of business located in Singapore, Singapore and which maintains offices in East Cambridge, Massachusetts.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“hereinafter referred to as CAFA”) codified as 28 U.S.C. 1332(d)(2). The matter in controversy exceeds \$5,000,000, in the aggregate, exclusive of interest and costs, as each member of the proposed Class of thousands is entitled to up to \$1,500.00 in statutory damages for each call that has violated the TCPA. Further, Plaintiff alleges a national class, which will result in at least one Class member from a different state.

11. This court has subject matter jurisdiction over Plaintiff’s TCPA claims pursuant to 28 U.S.C. § 1331 because Plaintiff’s TCPA claims arise under the law of the United States, specifically 47 U.S.C. § 227 *et seq.*

12. This Court has personal jurisdiction over MIT because it is located within the Commonwealth of Massachusetts and a substantial part of the wrongful acts alleged in this Complaint were committed in Massachusetts. Similarly, the Court has personal jurisdiction over

EMERITUS based upon their office in this District and on their telemarketing conduct designed from this district and made into this district for MIT, their client in this District.

13. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1) because Defendant Massachusetts Institute of Technology (“MIT”) is a resident of the Commonwealth of Massachusetts and maintains its principal offices in this District. Venue is also proper in this District under 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the Plaintiff’s claims arose in this District, whereas the services that were promoted in the illegal telemarketing calls that are the subject of this putative class action were provided. Furthermore, the telemarketing campaign was designed in this District.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991 (47 U.S.C. § 227) TCPA Background

Calls Made Using an “Automated Telephone Dialing System”

14. The TCPA regulates, among other things, the use of an automated telephone dialing system (“ATDS”) to make calls or send text messages. *See* 47 U.S.C. § 227, *et seq.*; *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Report and Order*, 18 FCC Rcd. 14014, 14115 ¶ 165 (2003).

15. Specifically, the TCPA prohibits the use of an automated telephone dialing system to make any telemarketing call or send any telemarketing text message to a wireless number in the absence of an emergency or the prior express written consent of the called party. *See* 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(2); *In the Matter of Rules &*

Regulations Implementing the Tel. Consumer Prot. Act of 1991, 27 F.C.C. Rcd. 1830, 1831 (F.C.C. 2012).

16. In 2013, the FCC required prior express consent for all autodialed telemarketing calls including SMS text messages (“robocalls”). 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., tha 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 Rule s and Regulations Implementing the Tel. Consumer Prot. Act of 1991, FCC 27 FCC Rcd. 1830, 1844 (F.C.C. 2012) (footnotes omitted).

17. Furthermore, the applicable FCC Orders clarify that “[c]onsumers have the right to revoke consent, using any reasonable method including orally or in writing. Consumers generally may revoke, for example, by way of a consumer-initiated call, directly or in response to a call initiated or made by a caller, ...”. See *In the Matter of Rule s and Regulations Implementing the Telephone Consumer Protection Act of 1991*, FCC 15-72, 30 FCC Rcd. 7961 ¶ 64 (F.C.C. July 10, 2015).

18. 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 FCC Rcd. 14014, 14115 ¶ 165 (F.C.C. 2003).

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