

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO

DAVID K. HICKS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CHARTER COMMUNICATIONS, INC.
d/b/a SPECTRUM and JOHN DOES 1-10,

Defendant.

Case No.

CLASS ACTION COMPLAINT

NOW COMES DAVID K. HICKS (“Plaintiff), individually, and behalf of all others similarly situated, by and through his undersigned counsel, complaining of CHARTER COMMUNICATIONS, INC. d/b/a SPECTRUM (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking 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.

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

PARTIES

6. Plaintiff is a natural person, over 18-years-of-age, who at all times relevant resided in Moraine, Ohio.

7. Defendant is a corporation organized under the laws of the State of Delaware.

8. Defendant is a prominent cable and internet service provider.

9. Defendant provides cable and internet services to more than 31 million customers in 41 states, including the State of Ohio.

10. Defendant maintains its principal place of business in Stamford, Connecticut.

11. Defendant is a "person" as defined by 47 U.S.C. § 153(39).

12. JOHN DOES 1-10 are third party vendors/agents that Defendant engages to place outbound marketing calls to consumers on Defendant's behalf.

13. Defendant is vicariously liable for the acts of JOHN DOES 1-10.

FACUTAL ALLEGATIONS

14. Upon information and belief, Defendant develops marketing campaigns using a combination of sales channels, with an emphasis on outbound telemarketing.

15. Upon information and belief, Defendant utilizes third-party vendors (John Does 1-10) to market its cable and internet products.

16. Upon information and belief, Defendant's vendors are essential to the success of its telemarketing campaigns.

17. Upon information and belief, Defendant's ability to generate revenue significantly depends on its access to high-quality vendors.

18. Defendant is subject to liability under the TCPA for actions of its third-party vendors who engage in outbound telemarketing efforts on Defendant's behalf.

19. At all times relevant, Plaintiff was the sole operator, possessor, and subscriber of the numbers ending in 5676 and 2174 ("Plaintiff's phone numbers").

20. At all times relevant, Plaintiff's phone numbers were assigned to a cellular telephone service.

21. At all times relevant, Plaintiff was financially responsible for his cellular telephone equipment and services.

22. At no point in time did Plaintiff enter into a services contract with Defendant.

23. At no point in time did Plaintiff solicit Defendant's services.

24. At no point in time did Plaintiff provide Plaintiff's phone numbers to Defendant or otherwise consent to receive marketing calls from Defendant.

25. In or around March 2021, Plaintiff started to receive solicitation calls from Defendant to his cellular number ending in 5676.

26. Shortly after Defendant's solicitation calls began, Plaintiff answered a few of Defendant's calls.

27. Immediately upon answering Defendant's solicitation calls, Plaintiff was greeted by a prerecorded or artificial voice that marketed Defendant's services.

28. At first, Plaintiff would just hang up and hope that the calls would cease on their own.

29. Unfortunately, Defendant's solicitation calls did not end and Defendant continued

placing solicitation calls to Plaintiff's number ending in 5676.

30. Frustrated with the invasive solicitation calls, Plaintiff answered one of Defendant's calls and was eventually connected with a live representative.

31. Once connected with a live representative, Plaintiff advised the representative that he was not interested in Defendant's services and requested that Defendant cease its solicitation calls to his number ending in 5676.

32. Despite Plaintiff expressing no interest in Defendant's services, Defendant continued placing solicitation calls to Plaintiff's number ending in 5676 through December 2021.

33. In December 2021, Plaintiff changed his cellular phone number and obtained a new number ending in 2174.

34. Shortly after Plaintiff changed numbers, Plaintiff began receiving solicitation calls from Defendant to his new number ending in 2174.

35. In or around December 2021, frustrated with Defendant's relentless solicitation calls, Plaintiff answered one of Defendant's calls and again spoke to a live representative.

36. During this call, Plaintiff requested that Defendant cease its calls to his new number ending in 2174.

37. Defendant's request fell on deaf ears and Defendant continued to bombard Plaintiff's new number with solicitation calls.

38. Defendant placed its solicitation calls from various phone numbers, including the phone number (937) 262-9586.

39. All of Defendant's solicitation calls utilized an artificial or prerecorded voice ("robocalls").

40. It was clear to Plaintiff that Defendant's phone calls utilized an artificial and/or

prerecorded voice because (1) all calls contained the identical sales pitch; (2) the voice in all calls was monotone and was conspicuously not the voice of a live representative; and (3) none of the calls identified Plaintiff by name.

41. In total, Defendant placed no less than twenty-five (25) solicitation calls to Plaintiff's phone numbers from March 2021 through the present.

DAMAGES

42. Defendant's illegal telemarketing practices have caused Plaintiff concrete harm, including: invading Plaintiff's privacy, nuisance, wasting Plaintiff's time, the increased risk of personal injury resulting from the distraction caused by the solicitation calls, decreased productivity, aggravation that accompanies unwanted solicitation calls, frustration, loss of concentration, and the loss of battery charge.

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

44. Frustrated and concerned with the escalation of Defendant's invasive telemarketing practices, Plaintiff retained counsel to file this action to compel Defendant to cease its unlawful practices.

CLASS ALLEGATIONS

45. All preceding Paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

46. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) individually, and on behalf of all others similarly situated ("Putative Class") defined as follows:

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