

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

Armania Ingram, on behalf of herself
and on behalf of all others similarly
situated,

Plaintiff,

v.

ADT LLC,

Defendant.

Case No:
Class Action
JURY DEMAND

COMPLAINT

Plaintiff Armania Ingram, on behalf of herself and on behalf of all others similarly situated, alleges on personal knowledge, investigation of counsel and information and belief as follows:

NATURE OF ACTION

1. Plaintiff brings this action for damages, and other legal and equitable remedies, resulting from the illegal actions of defendant in negligently, knowingly and/or willfully calling plaintiff and class members on their cellular telephones using an “automatic telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), and/or using “an artificial or prerecorded voice” as referenced in 47 U.S.C. § 227(b)(1)(A), without their prior express consent within the meaning of the Telephone Consumer Protection

Act (hereinafter referred to as the "TCPA"), 47 U.S.C. § 227 *et seq.*, and the Federal Communication Commission rules promulgated thereunder, 47 C.F.R. § 64.1200.

2. Plaintiff brings this action for injunctive relief and statutory damages resulting from defendant's illegal actions.

JURISDICTION AND VENUE

3. This matter in controversy exceeds \$5,000,000, as each member of the proposed class is entitled to up to \$3,000 in statutory damages for each call that violated the TCPA. Accordingly, this court has jurisdiction pursuant to 28 U.S.C. § 1332(d)(2). Further, plaintiff alleges a national class, which will result in at least one class member belonging to a different state. Therefore, both elements of diversity jurisdiction under the Class Action Fairness Act of 2005 ("CAFA") are present, and this court has jurisdiction. This court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

4. Venue is proper in this court pursuant to 28 U.S.C. § 1391 and 28 U.S.C. § 123 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

5. Plaintiff is, and at all times mentioned herein was, a resident of Knox County, Tennessee.

6. Defendant ADT LLC is, and at all times mentioned herein was, a Delaware limited liability company doing business in Knox County, Tennessee.

THE TELEPHONE CONSUMER PROTECTION ACT

7. In 1991, Congress enacted the TCPA¹ in response to a growing number of consumer complaints regarding certain telemarketing practices.

8. The TCPA regulates, among other things, the use of automated telephone equipment, or “autodialers,” and prerecorded voices. Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of an autodialer or prerecorded voice to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.²

9. According to findings by the 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

¹ Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. § 227. The TCPA amended Title II of the Communications Act of 1934, 47 U.S.C. § 201 *et seq.*

² Courts have long held that that a “called party” under the TCPA is the recipient of the call, not the party the caller was intending to reach. *See, e.g., Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1251 (11th Cir. 2014); *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638-39 (7th Cir. 2012).

and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.³

10. In 2003, the FCC affirmed that it is unlawful “to make any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number.”⁴

11. Further, a single call using both a prerecorded voice and an autodialer constitutes two violations of the TCPA, even if both violations arose from the same call.⁵

12. The 2003 FCC order also defined a predictive dialer as “an automated dialing system that uses a complex set of algorithms to automatically dial consumers’ telephone numbers in a manner that ‘predicts’ the time when a consumer will answer the phone and a telemarketer will be available to take the call.”⁶ The FCC concluded that “[t]he basic function of such equipment...[is] the capacity to dial numbers without human intervention.”⁷

13. On January 4, 2008, the FCC released a Declaratory Ruling wherein it “reiterate[d] that the plain language of section 227(b)(1)(A)(iii) prohibits the use of

³ Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

⁴ *Id.*, ¶ 165. See also 47 U.S.C. § 227(b)(1), which contains exceptions for calls made for emergency purposes or made with the prior express consent of the called party.

⁵ See *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101 (11th Cir. 2015).

⁶ *Id.* at 14,143 n. 31.

⁷ *Id.* at 14,092.

autodialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.”⁸

14. The 2008 Declaratory Ruling “affirm[ed] that a predictive dialer constitutes an automatic telephone dialing system and is subject to the TCPA’s restrictions on the use of autodialers.”⁹

15. In 2018, a D.C. Circuit decision struck down portions of a 2015 FCC Order, but in a portion unaffected by the decision the 2015 FCC Order held that consumers may revoke consent through reasonable methods. Thus, consumers may revoke consent through any reasonable method, including orally: “[c]onsumers generally may revoke, for example, by way of a consumer-initiated call, directly in response to a call initiated or made by a caller, or at an in-store bill payment location, among other possibilities.”¹⁰

16. Under the TCPA, the burden is on defendants to demonstrate prior express consent.¹¹

⁸ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991 (“FCC Declaratory Ruling”), 23 F.C.C.R. 559, ¶ 11, 23 FCC Rcd. 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

⁹ 23 FCC Rcd. at 566.

¹⁰ 2015 Order at (¶ 64).

¹¹ See FCC Declaratory Ruling, 23 F.C.C.R. at 565 (¶ 10); *Toney v. Quality Res., Inc.*, 2014 WL 6757978, at *3 (N.D. Ill. Dec. 1, 2014).

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