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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Debra Duke, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

American Express Company, a New York
registered corporation,

Defendant.

NO.

CLASS ACTION COMPLAINT

JURY DEMAND

Plaintiff Debra Duke (“Plaintiff Duke” or “Duke”) brings this Class Action Complaint and Demand for Jury Trial against Defendant American Express Company (“Defendant American Express” or “American Express”) to stop the Defendant from violating the Telephone Consumer Protection Act by making pre-recorded calls to consumers’ phone numbers without first obtaining their prior express consent. Plaintiff also seeks injunctive and monetary relief for all persons injured by Defendant’s conduct. Plaintiff Duke, for this Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

PARTIES

1. Plaintiff Debra Duke is a resident of Tucson, Arizona.

2. Defendant American Express is a New York registered corporation headquartered in New York, New York. Defendant American Express conducts business in this District and throughout the U.S.

JURISDICTION AND VENUE

3. This Court has federal question subject matter jurisdiction over this action under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).

4. This Court has personal jurisdiction over the Defendant since the wrongful conduct giving rise to this case was directed to Plaintiff in this District. Venue is also proper in this District because Plaintiff resides in this District.

INTRODUCTION

5. As the Supreme Court explained at the end of its term this year, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints. For nearly 30 years, the people’s representatives in Congress have been fighting back.” *Barr v. Am. Ass'n of Political Consultants*, No. 19-631, 2020 U.S. LEXIS 3544, at *5 (U.S. July 6, 2020).

6. When Congress enacted the TCPA in 1991, it found that telemarketers called more than 18 million Americans every day. 105 Stat. 2394 at § 2(3).

7. By 2003, due to more powerful autodialing technology, telemarketers were calling 104 million Americans every day. In re Rules and Regulations Implementing the TCPA of 1991, 18 FCC Rcd. 14014, ¶¶ 2, 8 (2003).

8. The problems Congress identified when it enacted the TCPA have only grown exponentially in recent years.

9. According to online robocall tracking service “YouMail,” 4.3 billion robocalls were placed in February 2023 alone, at a rate of 154.6 million per day. www.robocallindex.com (last visited March 5, 2023).

10. The FCC also has received an increasing number of complaints about unwanted calls, with 150,000 complaints in 2016, 185,000 complaints in 2017, and 232,000 complaints in 2018. FCC, Consumer Complaint Data Center, www.fcc.gov/consumer-help-center-data.

11. “Robocalls and telemarketing calls are currently the number one source of consumer complaints at the FCC.” Tom Wheeler, *Cutting off Robocalls* (July 22, 2016), statement of FCC chairman.¹

12. “The FTC receives more complains about unwanted calls than all other complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer Protection, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2 (2016).²

COMMON ALLEGATIONS

13. American Express is a globally integrated payment company that issues out charge and credit cards, gift cards, savings, insurance, and other payment solutions.³

14. Defendant American Express places pre-recorded debt collection calls to consumers who owe a debt on a payment card.

15. Telemarketing reporting sites have captured pre-recorded messages that Defendant American Express left on consumer voicemails, including:

¹ <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls>

² https://www.ftc.gov/system/files/documents/advocacy_documents/comment-staff-ftc-bureau-consumer-protection-federal-communications-commission-rules-regulations/160616robocallscomment.pdf

³ <https://www.americanexpress.com/>

16. Numerous consumers have posted complaints online regarding wrong number debt collection calls that they received from Defendant American Express, including:

- “I am receiving these phone calls and voicemails for about a week now from a number I don't recognize. The voicemails claim they are calling on behalf of American Express in reference to a personal business matter. The calls aren't actually directed to me, but to my daughter and her husband who do hold an AMEX card. I don't and I'm not referenced on their account. How come they got my phone number?”⁶
- “Just got a call from a guy with a Indian accent asking for my ex boyfriend from 3 years ago. I said he has the wrong number then he asked me if I knew him and said he was from American Express I started to feel like something was not right so I just hung up on him he tried calling me three times and left a voicemail he gave me his private line to call him back on 623-492-2653. Sounds like a scam. Does anyone know for sure? hope they catch this guy”⁷
- “called looking for relatives who live out of town. Said it wan an emergency and must speak to them. Had a mid east accent. Asked if I would give them message and he would give his direct line at 623-492-8061. Repeated it to make sure I had it.”⁸
- “Similar to others, received following message on line listed as my home phone. This line is NOT the regular line for Amex... I don't even have an Amex.
This is an important message for <my name>. Mr. <name>, my name is Catina Rosina. I'm calling you from American Express. Please do not disregard this message as I need to share an important update with you, so I request you to call me back at my direct number 623-492-1880 again. My number is 623-492-1880. I'm here in the office til 6:30 p.m.. Eastern Standard time. I look forward to talk to you soon. If you're not able to reach

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https://www.reddit.com/r/personalfinance/comments/kj5n4n/phone_messages_from_a_number_claiming_to_call/

⁷ <https://800notes.com/Phone.aspx/1-866-280-1853/3>

⁸ *Id.*

me at my direct number. You can call the regular line for American Express at 866-280-1853. Thank you.”⁹

- “Wrong number”¹⁰
- “Scammers; called for someone else. I've had this number long enough i shouldn't be getting calls for someone else. First phone number was a spoof from Arizona. 623-492-2761 We need stricter punishments for white collar crimes and a better way to filter out these sc*mbags.”¹¹
- “They’ve been calling up to twice a day for weeks. When I answer they say nothing. I called back and the machine asks for my American Express number and last 4 digits of Ss#. I don’t have an Am Ex account so I kept just saying representative. Then Sheryl gets on and I say I don’t have an Am Ex account and she says ignore the calls. But they’re constant! So she says maybe it’s wrong number and she’ll try to take it off. I asked who did you think you were calling? She says she’ll have to research that. I say, can’t you type my phone number in your computer and get the name? She says no they don’t have that capability. What? I don’t believe it’s American Express.”¹²
- “Claiming they worked for American Express claiming it was a file against someone.”¹³
- “Melvin called asking for somebody, said he was from American Express Business and wanted to talk about business opportunities. Left a direct call back #855-658-8914. But the dialed from #336-393-9916.”¹⁴

17. In response to these calls, Plaintiff Duke files this lawsuit seeking injunctive relief requiring the Defendant to cease from violating the Telephone Consumer Protection Act, as well as an award of statutory damages to the members of the Class and costs.

PLAINTIFF DUKE’S ALLEGATIONS

⁹ *Id.*

¹⁰ <https://directory.youmail.com/phone/866-280-1853>

¹¹ *Id.*

¹² <https://800notes.com/Phone.aspx/1-800-453-2044/2>

¹³ <https://800notes.com/Phone.aspx/1-855-618-2435>

¹⁴ <https://800notes.com/Phone.aspx/1-855-431-0554/7>

18. Plaintiff Duke started receiving pre-recorded calls and text messages from American Express in August 2022 to her cell phone number.

19. The pre-recorded calls and text messages were intended for Melissa Mae Tresos.

20. Plaintiff Duke does not know who Melissa Mae Tresos is.

21. Plaintiff has owned her cell phone number since at least 2012.

22. Before August 2022, Plaintiff Duke answered calls from Defendant American Express and went through automated prompts so she could speak to a live agent. Plaintiff did get through to live employees and she told them that they were calling the wrong number. She also asked them to stop calling her.

23. In addition, Defendant American Express's employees communicated the name of the intended recipient of the calls/texts and also disclosed personal contact details about Melissa Mae Tresos, including how much debt was owed.

24. Despite Plaintiff Duke's stop requests, the calls continued.

25. For example, on August 31, 2022 Plaintiff received a pre-recorded call from Defendant American Express to her cell phone from 888-819-2135 at 2:33 PM. Plaintiff answered this call and heard an automated message. However, after 3 minutes, she was unable to get through to a live employee.

26. Plaintiff Duke's attorneys called 888-819-2135 and confirmed that this number is owned and/or operated by Defendant American Express.

27. Plaintiff received another pre-recorded call from Defendant American Express to her cell phone on September 3, 2022 at 9:51 AM, from 888-819-2135. Plaintiff answered the call and went through automated prompts until she got through to a live employee. Plaintiff told the American Express employee that she was receiving unwanted calls intended for somebody she does not know. Plaintiff also told the employee to stop calling her cell phone number.

28. Despite this, Plaintiff received additional unwanted pre-recorded calls from Defendant American Express that she answered on:

- September 15, 2022 at 12:01 PM from 800-528-4800;
- September 22, 2022 at 12:46 PM from 800-528-4800; and
- September 30, 2022 at 8:10 AM from 800-528-4800

29. Plaintiff Duke's attorneys called 800-528-4800 and confirmed that this number is owned and/or operated by American Express.

30. On October 1, 2022 at 9:52 AM, Plaintiff received yet another unwanted pre-recorded call from Defendant American Express to her cell phone from 800-528-4800. Plaintiff answered this call and again went through the required prompts so she could speak to a live employee. Plaintiff spoke to a live American Express employee and asked for the calls to stop, again explaining that American Express was calling the wrong number.

31. Plaintiff Duke received additional unwanted pre-recorded calls from Defendant American Express throughout October of 2022, despite her requests for the calls to stop.

32. On October 25, 2022 at 9:51 AM, Plaintiff received an unwanted text message from Defendant American Express to her cell phone number, from shortcode 90347:

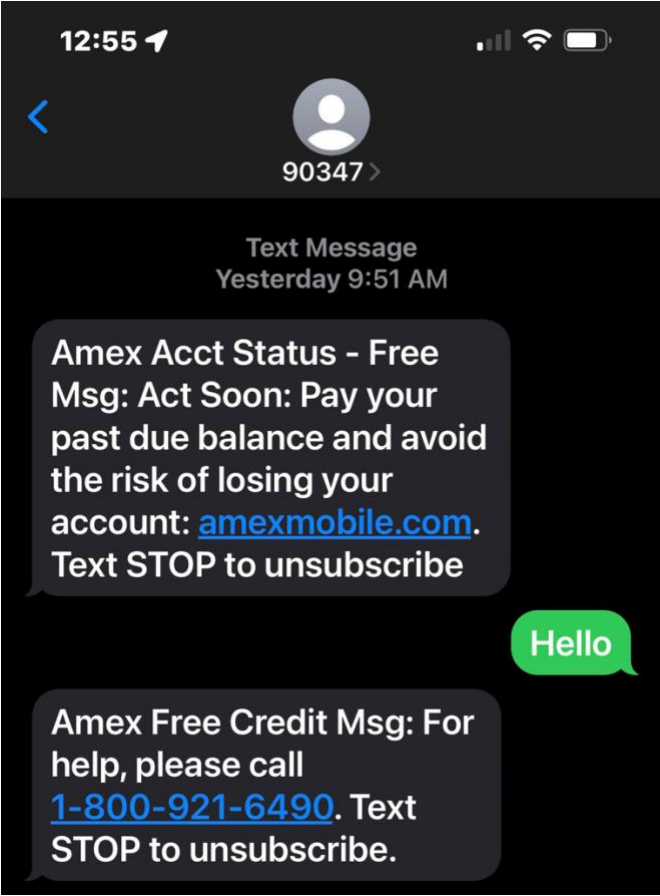


Figure 1 - October 25, 2022

33. The website amexmobile.com forwards directly to AmericanExpress.com when it is visited:

WHERE GOES
FROM CLICK TO LOAD

#	Code	Requested URL
✓	301	http://amexmobile.com ▪ Redirects: 1
1	301	http://amexmobile.com 301 Redirect
2	200	https://www.americanexpress.com/ Trace Complete

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34. Phone number 800-921-6490 is owned and/or operated by Defendant American Express, as per its Facebook page:

Author
American Express ✓

Hi Linda. Thank you for taking the time to reach out to us. We would like to look into your concerns; however, we are unable to securely access your account via this channel. We would recommend that you contact our account services team at 800-921-6490 to discuss the circumstances surrounding the notification of a delayed payment; they are available 24 hours a day, 7 days a week. We look forward to hearing from you. Enjoy your day.

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35. As per the above screenshot, Plaintiff Duke texted “Hello” to the text message, hoping to contact a live employee. Instead, Plaintiff received another automated text message asking her to call 800-921-6490.

¹⁵ <https://wherego.es.com/trace/20231011403/>

¹⁶ <https://www.facebook.com/AmericanExpressUS/posts/were-proud-to-be-named-to-the-bestworkplaces-for-women-list-by-the-great-place-t/10153958071882852/>

36. On November 1, 2022 at 1:00 PM, Plaintiff received another unwanted call from Defendant American Express to her cell phone number, from 888-819-2135. This call was not answered, but the caller display showed AmericanExpress:

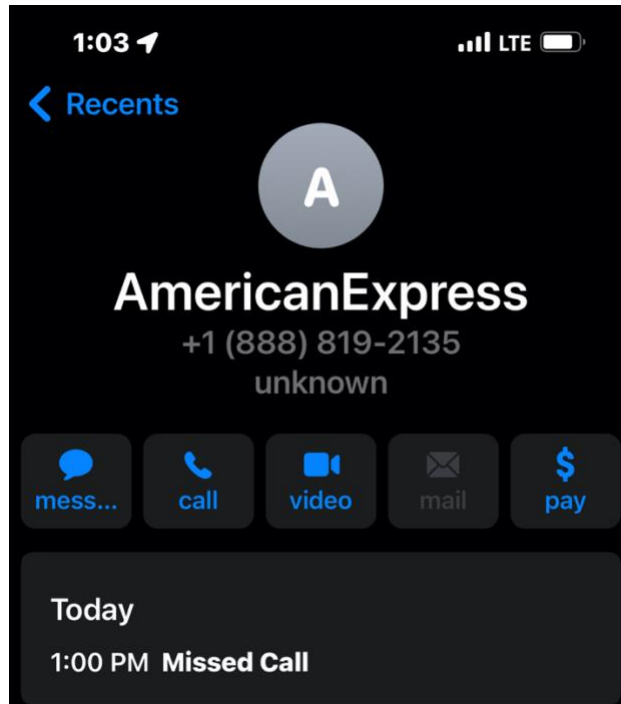


Figure 2 - November 1, 2022

37. The unauthorized telephone calls that Plaintiff received from or on behalf of American Express, as alleged herein, have harmed Plaintiff Duke in the form of annoyance, nuisance, and invasion of privacy, and disturbed the use and enjoyment of her phone, in addition to the wear and tear on the phone's hardware (including the phone's battery) and the consumption of memory on the phone and her voicemail.

38. In addition, the unwanted calls wasted Plaintiff's time, as she had to continually go through Defendant American Express's automated prompts in order to reach a live employee and ask for the calls to stop. The fact that the calls did not stop caused Plaintiff undue stress and mental distress.

39. Seeking redress for these injuries, Plaintiff Duke, on behalf of herself and Class of similarly situated individuals, bring suit under the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, which prohibits pre-recorded voice message calls to a cell phone number.

CLASS ALLEGATIONS

40. Plaintiff Duke brings this action pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3) and seek certification of the following Class:

Pre-recorded No Consent Class: All persons in the United States who from four years prior to the filing of this action through class certification (1) Defendants (or an agent acting on behalf of Defendants) called on their cellular phone number (2) using a pre-recorded voice message, and (3) for whom the Defendant claims (a) it obtained prior express consent in the same manner as Defendant claims it supposedly obtained prior express consent to call Plaintiff, or (b) Defendant did not obtain prior express consent.

41. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, their subsidiaries, parents, successors, predecessors, and any entity in which either Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff Duke anticipates the need to amend the Class definitions following appropriate discovery.

42. **Numerosity:** On information and belief, there are hundreds, if not thousands of members of the Class such that joinder of all members is impracticable.

43. **Commonality and Predominance:** There are many questions of law and fact common to the claims of the Plaintiff and the Class, and those questions predominate

over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) whether Defendant or its agents placed pre-recorded voice message calls to Plaintiff Duke and members of the Pre-recorded Class without first obtaining prior express consent to make prerecorded calls to members of the Class;
- (b) whether Defendant's conduct constitutes a violation of the TCPA;
- (c) whether members of the Class are entitled to treble damages based on the knowing and willfulness of Defendant's conduct.

44. **Adequate Representation:** Plaintiff Duke will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in class actions. Plaintiff Duke has no interests antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff Duke and her counsel are committed to vigorously prosecuting this action on behalf of the members of the Class, and have the financial resources to do so. Neither Plaintiff Duke nor her counsel have any interest adverse to the Class.

45. **Appropriateness:** This class action is also appropriate for certification because Defendant has acted or refused to act on grounds generally applicable to the Class and as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class and making final class-wide injunctive relief appropriate. Defendant's business practices apply to and affect the members of the Class uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with respect to the Class as wholes, not on facts or law applicable only to Plaintiff Duke. Additionally, the damages suffered by individual members of the Class will likely be small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. Thus, it would be virtually impossible for the members of the Class to obtain effective relief from Defendant's

misconduct on an individual basis. A class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

FIRST CLAIM FOR RELIEF
Telephone Consumer Protection Act
(Violation of 47 U.S.C. § 227)

(On Behalf of Plaintiff Duke and the Pre-recorded No Consent Class)

46. Plaintiff repeats and realleges the prior paragraphs of this Complaint and incorporates them by reference herein.

47. Defendant and/or its agents transmitted unwanted solicitation telephone calls to Plaintiff Duke and the other members of the Pre-recorded No Consent Class using a pre-recorded voice message.

48. These pre-recorded voice calls were made *en masse* without the prior express consent of the Plaintiff Duke and the other members of the Pre-recorded No Consent Class.

49. Defendant has, therefore, violated 47 U.S.C. §§ 227(b)(1)(A)(iii), (b)(1)(B). As a result of Defendant's conduct, Plaintiff Duke and the other members of the Pre-recorded No Consent Class are each entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Duke individually and on behalf of the Class, prays for the following relief:

50. An order certifying this case as a class action on behalf of the Class as defined above; appointing Plaintiff Duke as the representative of the Class; and appointing her attorneys as Class Counsel;

51. An award of actual and/or statutory damages and costs;

52. An order declaring that Defendant's actions, as set out above, violate the TCPA;

53. An injunction requiring Defendant to cease all unsolicited calling activity, and to otherwise protect the interests of the Class; and

54. Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Duke requests a jury trial.

DATED this 13th day of March, 2023.

By: /s/ Nathan Brown

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** Pro Hac Vice Motion Forthcoming*

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [American Express Hit with Class Action Over Alleged Robocalls](#)
