

FILED

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AUG 31 2017

Civil Case Number: _____

Brian Gardner, *on behalf of himself and all others similarly situated,*

Plaintiff,

v.

Centurylink, Inc.

Defendant.

8:17cv2084 T36 AEP

JURY TRIAL DEMANDED

CLASS ACTION

CLASS ACTION COMPLAINT

For his Class Action Complaint, Plaintiff, Brian Gardner, by and through his undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, states as follows:

INTRODUCTION

1. Plaintiff, Brian Gardner ("Plaintiff"), brings this class action for damages resulting from the illegal actions of Centurylink, Inc. ("Centurylink" or "Defendant"). Defendant negligently, knowingly, and/or willfully placed automated and prerecorded calls to Plaintiff's cellular phone in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (the "TCPA").

2. Centurylink is a telecommunications company "focused on connecting its customers to the power of the digital world."

<http://www.centurylink.com/aboutus/company-information.html> (last visited Aug. 24, 2017).

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3. As part of its business practice, it bombards unsuspecting consumers, with whom it has no relationship, with robocalls and prerecorded messages.

4. Plaintiff is such a consumer. He is not a Centurylink customer yet has been bombarded with autodialed and pre-recorded calls made without his consent and over his explicit objection.

5. Plaintiff seeks relief for himself and all others similarly situated for Centurylink's unlawful behavior.

JURISDICTION AND VENUE

6. This Court has original jurisdiction over this matter pursuant to 28 U.S.C. § 1331. *Mims v. Arrow Fin. Serv., LLC*, 132 S.Ct. 740, 751-53 (2012).

7. The Court has personal jurisdiction over Centurylink as Centurylink regularly conducts business within the state of Florida. Centurylink provides residential telecommunications services in this District, and has specifically advertised that fact. Indeed, Centurylink has a website advertising the availability of its services within Florida, including within this District. *See* <http://www.centurylink.com/local/fl/> (advertising "Packages Available in Florida") (last visited Aug. 24, 2017); *see also* <http://www.centurylink.com/local/> (last visited Aug. 24, 2017).

8. Venue is proper in this District as Plaintiff received Centurylink's telephone calls within this District.

PARTIES

9. Plaintiff is, and at all times mentioned herein was, an adult individual residing in Inverness, Florida.

10. Centurylink is a Louisiana corporation with its principal place of business located at 100 Centurylink Drive, Monroe, Louisiana 71203.

11. Plaintiff has never had a business relationship with Centurylink and never consented to be contacted by Centurylink on his cellular telephone.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991

12. The TCPA regulates, among other things, the use of automated telephone dialing systems.

13. 47 U.S.C. § 227(a)(1) defines an automatic telephone dialing system (“ATDS”) as equipment having the capacity –

(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and

(B) to dial such numbers.

14. Specifically, 47 U.S.C. § 227(I)(A)(iii) prohibits any call using an ATDS or an artificial or prerecorded voice to a cellular phone without prior express consent by the person being called.

ALLEGATIONS APPLICABLE TO ALL COUNTS

15. Defendant has repeatedly placed automated calls using an ATDS and prerecorded voices to Plaintiff’s cellular telephone (352) XXX-3338 (“the -3338 Number”).

16. Plaintiff’s number was and is assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

17. Centurylink calls Plaintiff from telephone number 844-212-0182.

18. Centurylink has bombarded the Plaintiff with daily automated calls beginning in or around June 2017.

19. Plaintiff has told Defendant on multiple occasions that he is not a Centurylink customer and that Defendant is to stop calling him.

20. In response, Defendant's representatives advised that Plaintiff would be put on an internal do-not-call list and he would not be called again.

21. Nevertheless, the calls to Plaintiff at the -3338 Number have persisted and continued.

22. At all times mentioned herein, Centurylink called Plaintiff's cellular telephone using an "automatic telephone dialing system" ("ATDS") as defined by 47 U.S.C. § 227(a)(1).

23. When Plaintiff answered calls from Centurylink, he heard a prerecorded and artificial message stating that the call was placed by Centurylink.

24. The same message has been used by the Defendant on multiple occasions.

25. In addition, after hearing the above message, Plaintiff would hear an extended period of silence before the calls would be routed to a live agent. This is indicative of Centurylink's use of a "predictive dialer."

26. The Federal Communications Commission has defined ATDS under the TCPA to include "predictive dialers." *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, at ¶ 12, 2008 WL 65485 (F.C.C.) (2008).

27. In addition, upon information and belief the hardware and software combination utilized by Centurylink has the capacity to store and dial sequentially generated numbers, randomly generated numbers or numbers from a database of numbers.

28. Defendant did not have Plaintiff's prior express consent to place automated calls to Plaintiff on his cellular telephone.

29. Defendant did not have Plaintiff's prior express consent to call Plaintiff using an artificial or prerecorded voice.

CLASS ACTION ALLEGATIONS

A. The Class

30. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23 on behalf of himself and all others similarly situated.

31. Plaintiff represents, and is a member of the following class: of two classes:

Class A

All persons within the United States to whom Centurylink or its agent/s and/or employee/s called said person's cellular telephone through the use of any automatic telephone dialing system within the four years prior to the filing of the Complaint.

Class B

All persons within the United States to whom Centurylink or its agent/s and/or employee/s called said person's cellular telephone with an artificial or prerecorded voice within the four years prior to the filing of the Complaint.

32. Defendant and its employees or agents are excluded from the Class. Plaintiff does not know the number of members in the Classes, but believes the Class members number in the several thousands, if not more. Thus, this matter should be certified as a Class action to assist in the expeditious litigation of this matter.

B. Numerosity

33. Upon information and belief, Defendant has placed automated and/or prerecorded message calls to cellular telephone numbers belonging to thousands of consumers, after being informed it was calling the wrong party, throughout the United

States. The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

34. The exact number and identities of the Class members are unknown at this time and can only be ascertained through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

C. Common Questions of Law and Fact

35. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class members. These questions include:

- a. Whether Defendant made calls to Plaintiff and Class members' cellular telephones using an ATDS;
- b. Whether Defendant made calls to Plaintiff and Class members' cellular telephones using an artificial or prerecorded voice;
- c. Whether Defendant can meet its burden of showing it obtained prior express consent to make each call;
- d. Whether Defendant's conduct was knowing willful, and/or negligent;
- e. Whether Defendant is liable for damages, and the amount of such damages; and
- f. Whether Defendant should be enjoined from such conduct in the future.

36. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely places automated calls to telephone numbers assigned to cellular telephone services is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and

administered in this case.

D. Typicality

37. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

E. Protecting the Interests of the Class Members

38. Plaintiff will fairly and adequately protect the interests of the Class and has retained counsel experienced in handling class actions and claims involving unlawful business practices. Neither Plaintiff nor his counsel has any interests which might cause them not to vigorously pursue this action.

F. Proceeding Via Class Action is Superior and Advisable

39. A class action is the superior method for the fair and efficient adjudication of this controversy. The interest of Class members in individually controlling the prosecutions of separate claims against Centurylink is small because it is not economically feasible for Class members to bring individual actions.

40. Management of this class action is unlikely to present any difficulties. Several courts have certified classes in TCPA actions. These cases include, but are not limited to: *Mitchem v. Ill. Collection Serv.*, 271 F.R.D. 617 (N.D. Ill. 2011); *Sadowski v. Med1 Online, LLC*, 2008 WL 2224892 (N.D. Ill., May 27, 2008); *CE Design Ltd. V. Cy's Crabhouse North, Inc.*, 259 F.R.D. 135 (N.D. Ill. 2009); *Lo v. Oxnard European Motors, LLC*, 2012 WL 1932283 (S.D. Cal., May 29, 2012).

COUNT I
Negligent Violations of the Telephone Consumer Protection Act,
47 U.S.C. § 227, et seq.

41. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

42. Defendant negligently placed multiple automated and prerecorded calls to cellular numbers belonging to Plaintiff and the other members of the Classes without their prior express consent.

43. Each of the aforementioned calls by Defendant constitutes a negligent violation of the TCPA.

44. Plaintiff and the Classes are entitled to an award of \$500.00 in statutory damages for each message sent in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

45. Additionally, Plaintiff and the Classes are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

46. Plaintiff and the Classes are also entitled to and do seek a declaration that:

- a. Defendant violated the TCPA;
- b. Defendant placed telemarketing calls; and
- c. Defendant placed calls to the Plaintiff and the Classes without prior express written consent.

COUNT II
Knowing and/or Willful Violations of the Telephone Consumer Protection Act,
47 U.S.C. § 227, et seq.

47. Plaintiff repeats and realleges the above paragraphs of this Complaint and incorporates them herein by reference.

48. Defendant knowingly and/or willfully placed multiple automated calls to cellular numbers belonging to Plaintiff and the other members of the Class without their prior express consent.

49. Each of the aforementioned calls by Defendant constitutes a knowing and/or willful violation of the TCPA.

50. As a result of Defendant's knowing and/or willful violations of the TCPA, Plaintiff and the Class are entitled to an award of treble damages up to \$1,500.00 for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

51. Additionally, Plaintiff and the Classes are entitled to and seek injunctive relief prohibiting such conduct by Defendant in the future.

52. Plaintiff and the Classes are also entitled to and do seek a declaration that:

- a. Defendant knowingly and/or willfully violated the TCPA;
- b. Defendant knowingly and/or willfully placed telemarketing calls to Plaintiff and the Classes;
- c. Defendant knowingly and/or willfully obtained the telephone numbers of non-customers;
- d. Defendant willfully placed telemarketing calls to non-customers such as Plaintiff and the Classes, knowing it did not have prior express written consent to do so; and
- e. It is Defendant's practice and history to place telemarketing calls to non-customers without their prior express consent.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that the Court grant Plaintiff and the Class the following relief against Defendant:

1. A determination that this action can be maintained as a class action, and certifying Plaintiff as class representatives and the undersigned attorneys as class counsel pursuant to Rule 23(a), (b)(2), and (b)(3)
2. Injunctive relief prohibiting such violations of the TCPA by Defendant in the

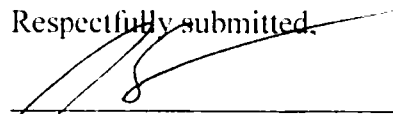
future;

3. Declaratory relief as requested;
4. Statutory damages of \$500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B);
5. Treble damages of up to \$1,500.00 for each and every call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(C);
6. An award of attorneys' fees and costs to counsel for Plaintiff; and
7. Such other relief as the Court deems just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: August 29, 2017

Respectfully submitted,



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JS 44 (Rev 09/10)

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**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA**

CIVIL COVER SHEET

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law.

Plaintiff(s):

First Listed Plaintiff:
Brian Gardner ;
County of Residence: Citrus County

Defendant(s):

First Listed Defendant:
Centurylink, Inc. ;
County of Residence: Outside This District

County Where Claim For Relief Arose: Citrus County

Plaintiff's Attorney(s):

J. Andrew Meyer (Brian Gardner)
J. Andrew Meyer, P.A.
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Redington Beach, Florida 33708
Phone: 7275303246
Fax:
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Defendant's Attorney(s):

Basis of Jurisdiction: 3. Federal Question (U.S. not a party)

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: N/A
Defendant: N/A


Origin: 1. Original Proceeding

Nature of Suit: 890 Other Statutory Actions

Cause of Action: 42 U.S.C. s. 227 - TCPA

Requested in Complaint

Class Action: Class Action Under FRCP23
Monetary Demand (in Thousands): \$1500 per violation
Jury Demand: Yes
Related Cases: Is NOT a refiling of a previously dismissed action

Signature: J. Andrew Meyer 

Date: 8/29/2017

8/29/2017

Florida Middle Civil Cover Sheet

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Florida Man Claims CenturyLink 'Bombards' Consumers with Robocalls](#)
