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12 Counsel for Plaintiff and the proposed class

13 UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 Christine Head, *on behalf of herself and*)
16 *others similarly situated,*)

No.: 3:18-cv-08189-ROS

17 Plaintiff,)

Jury Trial Demanded

18 v.)

**THIRD AMENDED CLASS
ACTION COMPLAINT**

19 Citibank, N.A.,)
20)

21 Defendant.)
22)

23 **Nature of this Action**

24 1. Christine Head (“Plaintiff”) brings this class action against Citibank, N.A.
25 (“Citibank” or “Defendant”), under the Telephone Consumer Protection Act (“TCPA”), 47
26 U.S.C. § 227, *et seq.*

27 2. Section 227(b)(1)(A)(iii) of the TCPA provides, in pertinent part:

28 It shall be unlawful for any person within the United States, or any person
outside the United States if the recipient is within the United States—

1 (A) to make any call (other than a call made for emergency purposes or made
2 with the prior express consent of the called party) using . . . an artificial or
prerecorded voice—

3 * * *

4 (iii) to any telephone number assigned to a paging service, cellular telephone
5 service, specialized mobile radio service, or other radio common carrier
6 service, or any service for which the called party is charged for the call[.]

7 3. Upon information and good faith belief, Citibank routinely violates 47
8 U.S.C. § 227(b)(1)(A)(iii) by placing calls using an artificial or prerecorded voice to
9 telephone numbers assigned to a cellular telephone service, without prior express consent,
10 in that it calls wrong or reassigned telephone numbers not assigned to its current or former
11 customers or authorized users.

12 **Jurisdiction and Venue**

13 4. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and
14 28 U.S.C. § 1331.

15 5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as a
16 portion of the events giving rise to this action occurred in this district, and as Citibank
17 transacts business in this district.

18 **Parties**

19 6. Plaintiff Christine Head is a natural person who at all relevant times resided
20 in Kingman, Arizona.

21 7. Citibank is a wholly owned subsidiary of Citigroup Inc., which is publicly
22 traded.

23 8. Citibank is a National Bank, FDIC Certificate Number 7213, with its
24 principal place of business in New York, New York.

25 9. Citibank's principal offerings include: consumer finance, mortgage lending
26 and retail banking (including commercial banking) products and services; investment
27 banking, cash management and trade finance; and private banking products and services.
28

The TCPA

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

11. According to findings by the FCC, the agency Congress vested with authority to issue regulations implementing the TCPA, prerecorded calls are prohibited because, as Congress found, such calls are a greater nuisance and invasion of privacy than live calls, and they can be costly and inconvenient.

12. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.¹

13. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and/or prerecorded message calls to a wireless number are permitted only if the calls are made with the “prior express consent” of the called party.²

Factual Allegations

14. Beginning in or around October 2017, Citibank placed a number of calls to cellular telephone number (928)-XXX-0023.

15. In total, Citibank placed more than 100 calls to cellular telephone number (928)-XXX-0023 from October-December 2017.

16. During the time Citibank placed its calls to (928)-XXX-0023, Plaintiff was the only customary user of her (928)-XXX-0023 telephone number.

17. In connection with its calls to telephone number (928)-XXX-0023 from October-December 2017, Citibank left 23 prerecorded voice messages on the cellular telephone voicemail associated with (928)-XXX-0023.

18. Plaintiff answered several of Citibank’s calls to her (928)-XXX-0023 cellular telephone number.

¹ *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115 (¶ 165) (2003).

² *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-278, Declaratory Ruling, 23 FCC Rcd 559, 564-65 (¶ 10) (2008).

1 19. In connection with each of the calls it placed to Plaintiff's cellular telephone
2 number that she answered, Citibank played an artificial or prerecorded voice message
3 referencing Plaintiff's supposed Home Depot account.

4 20. None of the calls Plaintiff answered from Citibank had a live person on the
5 line; rather, Citibank played a prerecorded voice message after Plaintiff said hello.

6 21. Each of the prerecorded messages would ask Plaintiff to return Citibank's
7 call.

8 22. Citibank is the issuer of Home Depot branded credit cards.

9 23. Citibank made the calls to Plaintiff in an attempt to reach a Home Depot
10 credit card customer.

11 24. Plaintiff does not have, and to her knowledge has never had, any relationship
12 with Citibank.

13 25. Plaintiff also does not have, and never had, a Home Depot account of any
14 kind.

15 26. At no point did Plaintiff provide her telephone number to Citibank or to
16 Home Depot.

17 27. Plaintiff's cellular telephone number is believed to have been received by
18 Citibank when another individual, "Jack Bingham," opened a new Citibank account using
19 Plaintiff's cellular telephone number on his application.

20 28. Plaintiff does not know Jack Bingham and she did not authorize any such
21 person to open an account using her cellular telephone number.

22 29. Citibank's records show all calls it placed, or caused to be placed, to
23 Plaintiff's cellular telephone number by using an artificial or prerecorded voice.

24 30. Each of Citibank's calls to Plaintiff's cellular telephone number was
25 accompanied by an artificial or prerecorded voice message.

26 31. No live person was ever on the line when Plaintiff answered Citibank's calls.

27 32. At one point, Plaintiff returned one of Citibank's calls to inform Citibank that
28 it was calling the wrong number.

1 N.A. placed a call in connection with a past-due credit card account, (2)
2 directed to a number assigned to a cellular telephone service, but not assigned
3 to a current or former Citibank, N.A. customer or authorized user, (3) via its
4 Aspect dialer and with an artificial or prerecorded voice, (4) from August 15,
5 2014 through the date of class certification.

6 47. Excluded from the class are Defendant, Defendant's officers and directors,
7 members of their immediate families and their legal representatives, heirs, successors, or
8 assigns, and any entity in which Defendant has or had a controlling interest.

9 48. The proposed class is so numerous that joinder of all members is
10 impracticable.

11 49. While Plaintiff does not know the exact number of members of the class, it
12 is estimated to contain more than one million members.

13 50. The proposed class is defined by reference to objective criteria.

14 51. In addition, the cellular telephone numbers of all members of the class can
15 be identified in business records maintained by Citibank and third parties, including class
16 members themselves.

17 52. Plaintiff's claims are typical of the claims of the members of the class
18 because all of the class members' claims originate from the same conduct, practice and
19 procedure on the part of Defendant, and Plaintiff possesses the same interests and has
20 suffered the same injuries as each class member.

21 53. Plaintiff and members of the proposed class received calls made using an
22 artificial or prerecorded voice, from Citibank, without consent, on their cellular telephone,
23 in violation of 47 U.S.C. § 227.

24 54. Plaintiff will fairly and adequately protect the interests of the members of the
25 class and has retained counsel experienced and competent in class action litigation.

26 55. Plaintiff has no interests that are irrevocably contrary to or in conflict with
27 the members of the class that she seeks to represent.

28 56. A class action is superior to all other available methods for the fair and
efficient adjudication of this controversy, since joinder of all members is impracticable.

1 57. Furthermore, as the damages suffered by individual members of the class
2 may be relatively small, the expense and burden of individual litigation make it
3 impracticable for the members of the class to individually redress the wrongs done to them.

4 58. There will be little difficulty in the management of this action as a class
5 action.

6 59. Issues of law and fact common to the members of the class predominate over
7 any questions that may affect only individual members, in that Defendant has acted on
8 grounds generally applicable to the class.

9 60. Among the issues of law and fact common to the class are:

- 10 a. Defendant's violations of the TCPA;
- 11 b. Defendant's use of an artificial or prerecorded voice in connection with
12 placing calls to cellular telephone numbers;
- 13 c. Liability for calls to wrong or reassigned cellular telephone numbers;
- 14 d. Defendant's practice of calling wrong or reassigned cellular telephone
15 numbers; and
- 16 e. the availability of statutory damages.

17 61. Absent a class action, Defendant's violations of the law will be allowed to
18 proceed without a full, fair, judicially supervised remedy.

19 **Count I**
20 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

21 62. Plaintiff repeats and re-alleges each and every factual allegation contained in
22 paragraphs 1-61.

23 63. Citibank violated 47 U.S.C. § 227(b)(1)(A)(iii) by making calls utilizing an
24 artificial or prerecorded voice to Plaintiff's cellular telephone number, without her consent.

25 64. As a result of Citibank's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff
26 and the members of the class are entitled to damages in an amount to be proven at trial.

27 **Trial by Jury**

28 65. Plaintiff is entitled to, and demands, a trial by jury.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- a) Determining that this action is a proper class action;

CERTIFICATE OF SERVICE

I certify that on April 28, 2021, the foregoing document was filed with the Court using CM/ECF, which will send notification of such to counsel of record.

/s/ Michael L. Greenwald
Michael L. Greenwald

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