

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN OF TEXAS**

AARON HIRSCH, individually and on behalf of all others similarly situated,	:	
	:	
Plaintiff,	:	AMENDED COMPLAINT - CLASS ACTION
	:	
v.	:	Civil Action No. 4:18-cv-245-Y
	:	
USHEALTH ADVISORS, LLC and USHEALTH GROUP, INC.,	:	JURY TRIAL DEMANDED
	:	
Defendants.	:	

AMENDED CLASS ACTION COMPLAINT

Plaintiff Aaron Hirsch, (“Plaintiff”), individually and on behalf of all others similarly situated, amends his Class Action Complaint (the “Complaint”) against Defendants USHealth Group, Inc. and USHealth Advisors, LLC (“Defendants” or “USHealth”), and alleges, upon personal knowledge as to his own conduct, and upon information and belief as to the conduct of others, as follows:

INTRODUCTION

1. Plaintiff brings this Complaint against Defendants to secure redress because Defendants willfully violated the Telephone Consumer Protection Act, 47 U.S.C § 227, *et seq.* (“TCPA”) and Maryland Telephone Consumer Protection Act, Md. Code, Com. Law, § 14-3201, *et seq.* (“MD TCPA”), and invaded Plaintiff’s privacy by causing unsolicited calls and text messages to be made to Plaintiff, as well as to members of the Classes (defined below) despite their registration on the national do-not-call list, and despite their requests that the calls cease.

2. Defendants made their unauthorized calls without the recipients’ consent and despite their inclusion on either the national or internal do-not-call lists of USHealth Advisors.

The calls were for the purpose of telemarketing and soliciting business from Plaintiff and members of the Classes.

3. The TCPA and MD TCPA were enacted to protect consumers from unsolicited and unwanted telephone calls exactly like those alleged in this case. In response to Defendants' unlawful conduct, Plaintiff seeks an injunction requiring Defendants to cease all unsolicited telephone calling activities to consumers, and an award of statutory damages to the members of the Classes under the TCPA and MD TCPA equal to \$500.00 per violation, together with court costs, reasonable attorneys' fees, and treble damages (for knowing and/or willful violations).

PARTIES

4. Plaintiff Aaron Hirsch is a citizen of Maryland and resides in Montgomery County, Maryland.

5. Defendant USHealth Group, Inc. is a corporation organized under the laws of Delaware and maintains its principal place of business in Ft. Worth, Texas. It is an insurance holding company that purports to focus on providing innovative health coverage for self-employed individuals and small business owners. Through its wholly-owned subsidiary USHealth Advisors, LLC, it sells insurance underwritten by its wholly-owned subsidiaries, Freedom Life Insurance Company of America and National Foundation Life Insurance Company.

6. Defendant USHealth Advisors, LLC is a limited liability company organized under the laws of Texas and maintains its principal place of business in Ft. Worth, Texas. It is a wholly-owned national health insurance distribution arm of USHealth Group, Inc. that sells individual health coverage and supplementary products underwritten by The Freedom Life Insurance Company of America and National Foundation Life Insurance Company.

7. Whenever in this Complaint it is alleged that Defendants committed any act or omission, it is meant that the Defendants' officers, directors, vice-principals, agents, servants, or

employees committed such act or omission and that at the time such act or omission was committed, it was done with the full authorization, ratification or approval of Defendants or was done in the routine normal course and scope of employment of the Defendants' officers, directors, vice-principals, agents, servants, or employees.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, a federal statute.

9. The Court has personal jurisdiction over Defendants because they conduct significant business in this District, and the unlawful conduct alleged in this Complaint occurred in, was directed to, and/or emanated from this District.

10. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) because the matter in controversy in this civil action exceeds the sum or value of \$5,000,000.00, exclusive of interests and costs, and at least one member of each of the Classes is a citizen of a state different from Defendants'. Further, each of the Classes include at least 100 members.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because Defendants' corporate headquarters are in this District, and because the wrongful conduct giving rise to this case occurred in, and/or emanated from this District.

12. Defendants are subject to specific personal jurisdiction in this District because it has continuous and systematic contacts with this District through its principal offices which are located in this District, and the exercise of personal jurisdiction over Defendants in this District does not offend traditional notions of fair play or substantial justice.

THE TCPA AND REGULATIONS

13. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In doing so, Congress recognized that “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy....” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243 § 2(5) (1991) (codified at 47 U.S.C. § 227).

14. For purposes of the TCPA, text messages are considered telephone calls. *See Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket 02-0278, Report and Order, 18 FCC Rcd. 14014, 14115 para. 165 (July 3, 2003).

15. As of October 16, 2013, unless the recipient has given prior express written consent,¹ the TCPA and Federal Communications Commission (“FCC”) rules under the TCPA generally prohibit certain calls to members of the National Do Not Call Registry (“NDNC”).

16. Furthermore, the FCC has held that “while a seller does not generally initiate calls made through a third-party telemarketer, it nonetheless may be vicariously liable under federal common law agency-related principles for violations of either section 227(b) or 227(c) committed by telemarketers that initiate calls to market its products or services. *See Petition Filed by DISH Network, LLC for Declaratory Ruling Concerning the Telephone Consumer Protection Act (TCPA) Rules*, CG Docket No. 11-50, para., 28 FCC Rcd 6574, 6584, para. 28 May 9, 2013); See also *Campbell-Ewald Co. v. Ewald*, 136 S.Ct. 663, 673 (2016).

17. Accordingly, an entity may be liable under the TCPA for a call made on its behalf, even if the entity did not directly place the call. Under those circumstances, the entity is deemed to have initiated the call through the person or entity that directly placed the call.

¹ Prior express written consent means “an agreement, in writing, bearing the signature of the person called that clearly authorizes the seller to deliver or cause to be delivered to the person called advertisements or telemarketing messages using an automatic telephone dialing system or an artificial or prerecorded voice, and the telephone number to which the signatory authorizes such advertisements or telemarketing messages to be delivered.” 47 C.F.R. § 64.1200(f)(8).

18. Finally, the TCPA established the NDNC, as well as the requirement that all businesses that place calls for marketing purposes maintain an “internal” do-not-call list (“IDNC list”). The IDNC is “a list of persons who request not to receive telemarketing calls made by or on behalf of that [seller].” *Id.* The TCPA prohibits a company from calling individuals on its IDNC list, or on the IDNC list of a seller on whose behalf the telemarketer calls, even if those individuals’ phone numbers are not on the NDNC. *Id.* at § 64.1200(d)(3),(6). Any company, or someone on the company’s behalf, who calls a member of the company IDNC violates the TCPA. The called party is then entitled to bring a private action under the TCPA for monetary and injunctive relief.

19. The NDNC allows consumers to register their residential landline and cellular telephone numbers and thereby indicate their desire not to receive telephone solicitations at those numbers. *See* 47 C.F.R. § 64.1200(c)(2) and (e). A listing on the NDNC “must be honored indefinitely, or until the registration is cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*

20. The TCPA and implementing regulations prohibit the initiation of telephone solicitations to telephone subscribers listed in the NDNC. 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2).

21. A consumer may bring suit for liquidated damages of \$500 per call against an entity where it has received two or more calls violating the regulations prescribed under Section (c) that were placed “by or on behalf of” the defendant. Liquidated damages may be trebled for will full violations. 47 U.S.C. § 227(c)(5).

22. A Defendant may be liable for the acts of an agent where the agent has been authorized to make representations on behalf of the defendant, and acts as an express or apparent agent:

Apparent authority may be supported by evidence that the seller allows the outside sales entity access to information and systems that normally would

be within the seller's exclusive control, including: access to detailed information regarding the nature and pricing of the seller's products and services or to the seller's customer information. The ability by the outside sales entity to enter consumer information into the seller's sales or customer systems, as well as the authority to use the seller's trade name, trademark and service mark may also be relevant. Finally, a seller would be responsible under the TCPA for the unauthorized conduct of a third-party telemarketer that is otherwise authorized to market on the seller's behalf if the seller knew (or reasonably should have known) that the telemarketer was violating the TCPA on the seller's behalf and the seller failed to take effective steps within its power to force the telemarketer to cease that conduct.

Dish Network, at para. 46.

COMMON FACTUAL ALLEGATIONS

23. Defendants operate a health insurance services business that purportedly offers insurance products to individuals and others.

24. Unfortunately for consumers, Defendants engage approximately 3,500 telemarketing agents nationwide who call consumers based on leads purchased by Defendants and purchased by themselves.

25. Defendants obtained these telephone numbers (*i.e.*, leads) by purchasing marketing lists containing consumers' telephone numbers through third-party vendors that include Quote Wizard, Nace, Prospect America, Lead Hustler, and Telephone Marketing Services. Some of these vendors are paid directly by USHA. Others are paid by insurance agents who exclusively market USHA products, and are reimbursed for their costs by USHA. In signing up new consumers for health insurance products, Agents are compensated by USHealth Advisory. In some instances, agents are also compensated with shares of Defendant USHealth Group stock.

26. Defendants have no idea whether the leads purchased by their agents are compliant with the NDNC or their own IDNC.

27. In Defendants' overzealous attempt to market their services, they, through their agents, placed (and continue to place) phone calls and transmitted text messages to consumers who never provided consent to call and to consumers having no relationship with Defendants.

28. The Defendants' agents are, in fact, agents because:

a. Defendants engage the agents by written agreement to make telemarketing calls on their behalf to sell their health insurance products;

b. Defendants pay agents when agents are successful in calling consumers and selling Defendants' insurance policies (USHealth Advisory by compensation or reimbursement, and USHealth Group by paying shares);

c. Defendants consent to their using USHealth Group and USHealth Advisory trademarks and logos, which the agents use;

d. Agents have access to Defendants' pricing of insurance products, which is not available to the public;

e. Agents can obtain consumer telemarketing leads from Defendants' data systems (and pay for them), which is not available to the public;

f. Agents input consumer information into Defendants' data systems regarding their identity and health information, which is not available to the public.

29. Through these agents, Defendants knowingly made (and continue to make) these telemarketing calls without the prior express written consent of the call recipients and continued to make calls after requests that the calls stop. As such, Defendants not only invaded the personal privacy of Plaintiff and members of the Classes, but also intentionally and repeatedly violated the TCPA.

FACTUAL BACKGROUND AS TO PLAINTIFF

30. On June 30, 2003, Plaintiff registered on the NDNC his cellular telephone assigned a number ending in 8313, and that telephone number has remained on the NDNC since that time.

31. Plaintiff uses the cellular telephone assigned a number ending in 8313 as his personal and residential telephone number.

32. During the period from November 2017 to November 2018, Defendants contacted Plaintiff on his cellular telephone number ending in 8313 multiple times without first obtaining Plaintiff's written consent and in violation of the NDNC.

33. Plaintiff received all calls as described above on his cellular telephone assigned a number ending in 8313.

34. On November 10, 2017, Plaintiff received on his cellular telephone a telemarketing call made by or on behalf of Defendants. Plaintiff's caller ID showed "443-328-4533".

35. During the call on November 10, 2017, Plaintiff spoke with an operator who touted potential savings on health insurance and sought to have another operator make a call back with further details on an offer for health insurance. Plaintiff did not object to speaking to another operator so that he could identify the company that was calling him. Thereafter, the caller identified the company calling as USHealth Advisors and advised that the company's website address is "ushealthfamily.com." Plaintiff then asked to be added on the company's do-not-call list and disconnected the call.

36. The website at "www.ushealthfamily.com" is the corporate website for defendant USHealth Group, Inc. The home page includes a picture of Troy McQuagge, the Chief Executive Officer of the company, and the pictures and names of "some of our Dedicated Agents," who are located across the country in numerous states including Arizona, Colorado, Florida, North Carolina, Oklahoma, Tennessee, and Texas. The website provides additional information about

the company and its products and allows users to seek a free quote on insurance and to talk with a company representative. The website states that it is copyrighted by USHealth Group.

37. A related website for USHealth Group at “www.ushealthgroup.com” includes additional information about USHealth products, as well as about the business operations and personnel of USHealth, including press releases that state:

38. “USHEALTH Group, Inc. is an insurance holding company based in Ft. Worth, Texas focused on providing innovative health coverage for self-employed individuals and small business owners. The goal of USHEALTH is to combine the talents of its employees and agents to market competitive and profitable insurance products, while providing superior customer service in every aspect of the company’s operations.”; and

39. “USHEALTH Advisors was founded in 2009 as Security Health Advisors, L.L.C. It is a wholly-owned national health insurance distribution arm of USHEALTH Group, Inc. The company sells individual health coverage and supplementary products underwritten by The Freedom Life Insurance Company of America and National Foundation Life Insurance Company, wholly-owned subsidiaries of USHEALTH Group, Inc. The company is focused on serving America’s self-employed, small business and individual insurance market through its captive Agent sales force.”

40. On November 13, 2017, Plaintiff received on his cellular telephone a telemarketing call made by or on behalf of Defendants. Plaintiff’s caller ID showed “813-300-2446,” which is listed on one of the USHealth company websites for USHealth Advisors Agent RJ Martin, <http://www.ushagent.com/rjmartin>, where US Health also prominently holds RJ Martin out as part of USHealth Group:

USHEALTH Group | Family and Individual Health Coverage



Insurance underwritten by:
Freedom Life Insurance Company of America
National Foundation Life Insurance Company

RJ MARTIN | (813) 300-2446 | EMAIL



RJ Martin | USHEALTH Advisors Agent



Contact

- RJ Martin
- Email
- (813) 300-2446

Get A Quote!

<http://www.ushagent.com/rjmartin>[1/24/2018 1:09:47 PM]

41. During the call on November 13, 2017, Plaintiff spoke with an operator, who was likely RJ Martin, who was following up on the November 10, 2017 call. The caller sought to market and sell USHealth insurance products to Plaintiff. The caller identified the company calling as USHealth Advisors and that the company's website address is "ushealthfamily.com."

42. Plaintiff requested that the caller put Plaintiff on the company's do-not-call list. Plaintiff then disconnected the call.

43. On December 1, 2017, Plaintiff received on his cellular telephone a telemarketing call made by or on behalf of Defendants. Plaintiff's caller ID showed "443-328-4533."

44. During the call on December 1, 2017, Plaintiff spoke with an operator who identified himself as Jim White. White sought to market and sell USHealth insurance products to Plaintiff. White identified the company calling as USHealth and advised that the company's website address is "ushealthfamily.com".

45. Plaintiff requested for the second time that White put Plaintiff on the company's do-not-call list. White asked "why" and plaintiff responded with frustration that he was already on the do-not-call list. Plaintiff then disconnected the call.

46. Plaintiff filed the initial Complaint in this Action on March 29, 2018 and served the Complaint on April 11, 2018. The Complaint sought, inter alia, an injunction precluding Defendants and their agents from calling Plaintiff. This action represented the third instance where Plaintiff requested that he be added to the USHealth do-not-call list.

47. On May 15, 2018 and May 16, 2018, after Plaintiff had requested on three occasions in the previous six months that Defendants stop calling him, Plaintiff received two more calls made by or on behalf of the Defendants, where the callers identified themselves as USHealth Advisors agents selling USHealth health insurance products. Plaintiff made a request to the second caller (the first caller hung up too fast) that she not call back, and that she place his number on the Defendant's do-not-call list (his fourth request), which she said she would do. Plaintiff's caller ID showed "410-635-1449" (May 15) and "202-759-3068" (May 16).

48. On July 14, 2018 and July 16, 2018, Plaintiff received two more calls made by Defendants or on behalf of Defendants. The first agent scheduled the second call at the precise day and time the second agent called. During the second call, the agent identified herself as USHealth Advisory agent "Jacquelyn Levine" asking if Plaintiff was interested in USHealth

insurance products. Plaintiff's caller ID showed "240-233-4757" (July 14) and "817-406-9546" (July 16). Plaintiff told Ms. Levine he was not interested in buying any health insurance and asked that she place his number on the Defendant's do-not-call list (his fifth request), which she said she would do.

49. Jacquelyn Levine is a USHealth Advisors agent who defendant USHealth Advisory list on its website:



JACQUELYN LEVINE | (941) 306-9941 (TEL:(941) 306-9941)

| EMAIL

([HTTP://USHAGENT.COM/JACQUELYNLEVINE/CONTACT/](http://USHAGENT.COM/JACQUELYNLEVINE/CONTACT/))



Contact

🚩 Jacquelyn Levine

✉ Email (<http://ushagent.com/jacquelynlevine/contact/>)

☎ (941) 306-9941 (tel:(941) 306-9941)

50. On August 13, 2018, Plaintiff received three text messages from "Devin" at USHealth asking if Plaintiff wanted to purchase health insurance products, which Plaintiff refused and asked to be put on the Defendant's do-not-call list for the sixth time, as follows:

Aaron,
This is Devin I am an assistant with US Health... you spoke with one of the agents I work with and got a quote..reaching out to see if you are interested and learning more about our coverage..Please feel free to reach out... if you no longer wish to recieve one, please respond with that as well..so I may mark your account accordingly.. 😊
Have a wonderful day!

Could you remind me what your web address is?



Family Health Coverage | Family and Individual Affordable Health Coverage | US Health Group
USHealthFamily.com

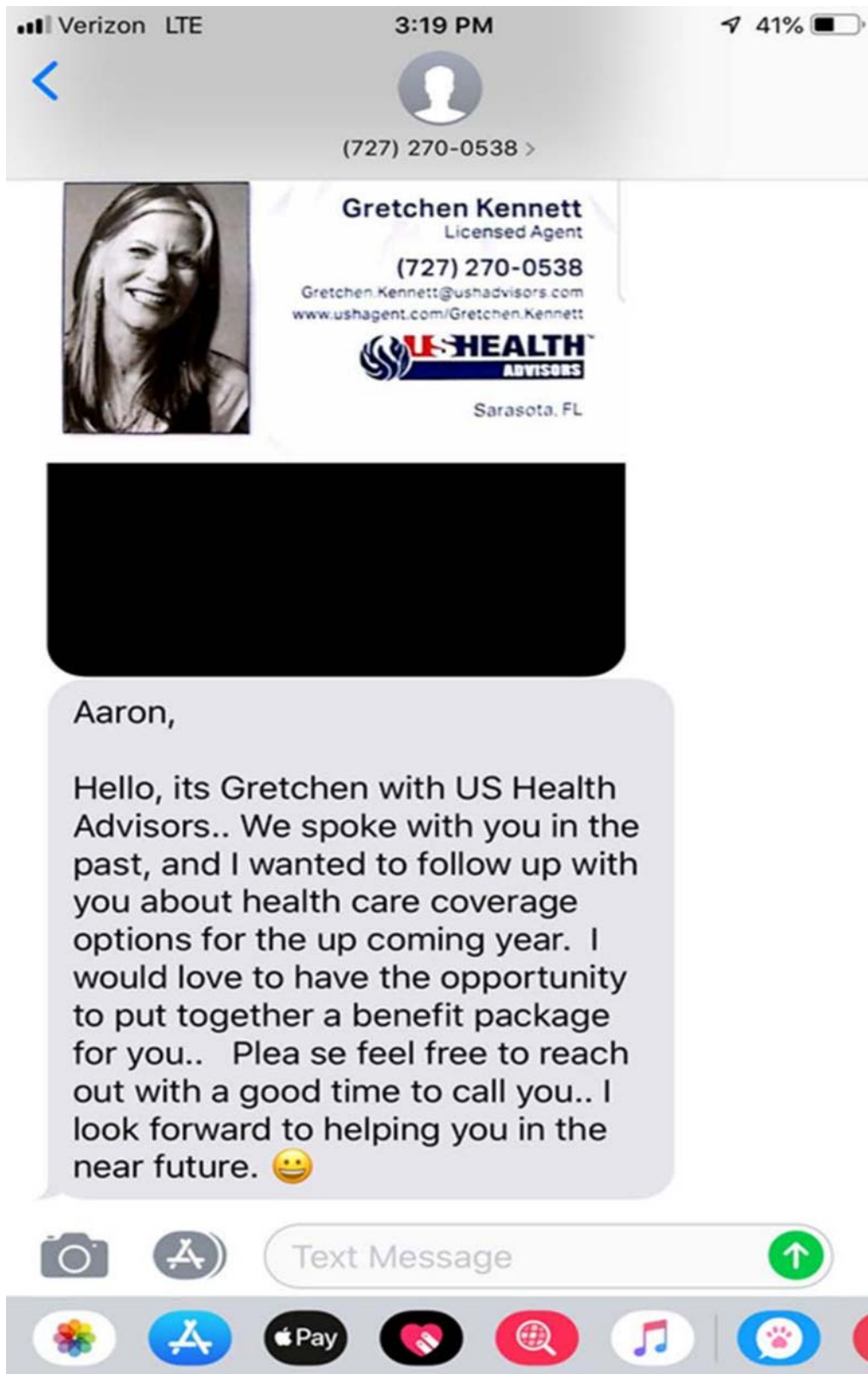
Is that what you needed?

Please add me to your internal Do Not Call list.

Read 2:24 PM

I can do that. If anything ever changes please reach out and let me know I would be happy to help and put you in the best position possible! Have a wonderful day!

51. On October 18, 2018, Plaintiff received a text transmitted by Defendants or on behalf of Defendants from USHealth Advisory agent Gretchen Kennett:



52. Gretchen Kennett's website states as follows:



GRETCHEN KENNETT | (727) 270-0538 (TEL:(727) 270-0538)

| EMAIL

([HTTP://USHAGENT.COM/GRETCHENKENNETT/CONTACT/](http://USHAGENT.COM/GRETCHENKENNETT/CONTACT/))



Contact

🚩 **Gretchen Kennett**

✉ Email (<http://ushagent.com/gretchenkennett/contact/>)

☎ (727) 270-0538 (tel:(727) 270-0538)

53. On November 8, 2018, Plaintiff received a call made by Defendants or on behalf of Defendants, where the caller identified himself as USHealth Advisory agent selling USHealth insurance products. Plaintiff's caller ID showed "410-221-3099." Plaintiff requested that he be added to the do-not-call list for the seventh time.

54. The aforementioned calls and texts are summarized as follows:

Date of Calls	Time	Phone Number	Caller
11/10/2017	11:29 am	443-328-4533	
11/13/2017	9:59 a.m.	813-300-2446	RJ Martin

Date of Calls	Time	Phone Number	Caller
12/1/2017	10:19 a.m.	443-328-4533	Jim White
5/15/2018	10:14 a.m.	410-635-1449	
5/16/2018	3:55 pm	202-759-3068	
7/14/2018	2:09 p.m.	240-233-4757	
7/16/2018	2:54 p.m.	817-406-9546	Jacquelyn Levine
11/8/2018	12:25 p.m.	410-221-3099	
11/8/2018	12:47 p.m.	817-406-9542	

Date of Texts	Time	Phone number	Caller
8/13/2018	1:33 p.m.	937-418-7341	Devin
8/13/2018	1:39 p.m.	937-418-7341	Devin
8/13/2018	2:25 p.m.	937-418-7341	Devin
10/18/2018	3:18 p.m.	727-270-0538	Gretchen Kennett

55. Plaintiff did not have a prior business relationship with Defendants, nor was Plaintiff interested in Defendants' services.

56. Plaintiff did not consent to being called by Defendants for telemarketing purposes and the calls received from Defendants were an intrusion into Plaintiff's privacy and caused Plaintiff annoyance and an unnecessary expenditure of his time and efforts.

57. Plaintiff is the exclusive user of the cellular telephone assigned the number ending in 8313 and the account holder of record for that Verizon account.

LEGAL BASIS FOR CLAIMS

58. All calls Defendants made to Plaintiff invaded Plaintiff's privacy and violated 47 U.S.C. § 227(b)(1) and/or 47 U.S.C. § 227(c).

59. Plaintiff has reason to believe that Defendants have called, and continue to call, thousands of wireless telephone customers to market their products and services in violation of the NDNC and the IDNC regulations.

60. Defendants' repeated violations of the NDNC and INDNC regulations demonstrate that Defendants failed to establish and implement reasonable practices and procedures to effectively prevent telephone solicitations in violation of the TCPA and the rules and regulations promulgated thereunder.

61. In order to redress injuries caused by Defendants' violations of the TCPA, Plaintiff, on behalf of himself and the Classes of similarly situated individuals, brings suit under the TCPA, 47 U.S.C. § 227, *et seq.*, which prohibits certain unsolicited calls to cellular phones and to residential phones that have been registered on the NDNC.

62. On behalf of Plaintiff and the Classes, Plaintiff seeks an injunction requiring Defendants to cease all telemarketing to consumers on their cellular telephones and an award of statutory damages to the Class members, together with costs and reasonable attorneys' fees.

CLASS ACTION ALLEGATIONS

63. Plaintiff brings this action pursuant to Rule 23(a), Rule 23(b)(2), and Rule 23(b)(3) of the Federal Rules of Civil Procedure individually and on behalf of the Classes, which include:

- a. The "NDNC Class," consisting of all persons in the United States who, within four years prior to the commencement of this litigation through the date that class notice is disseminated, received two or more calls and/or texts during a twelve month period made by or on behalf of USHealth on their residential or cellular telephone number that had been registered on the National Do Not Call Registry;

- b. The “IDNC Class,” consisting of all persons in the United States who, within four years prior to the commencement of this litigation through the date that class notice is disseminated, received two or more calls and/or texts during a twelve month made by or on behalf of USHealth on their residential or cellular telephone number after they had requested that such calls cease;
- c. The “Maryland NDNC Class,” consisting of all persons in Maryland who, within three years prior to the commencement of this litigation through the date that class notice is disseminated, received two or more calls and/or texts during a twelve month period made by or on behalf of USHealth on their residential telephone number that had been registered on the National Do Not Call Registry; and
- d. The “Maryland INDNC Class,” consisting of all persons in Maryland who, within four years prior to the commencement of this litigation through the date that class notice is disseminated, received two or more calls and/or texts during a twelve month period made by or on behalf of USHealth on their residential or cellular telephone number that had been registered on the National Do Not Call Registry;

64. Plaintiff reserves the right to modify the Class definitions as warranted as additional facts became known upon further investigation and discovery.

65. Plaintiff and the Class members were harmed by Defendants’ acts in at least the following ways: Defendants, either directly or through their agents, illegally contacted Plaintiff and the Classes *via* their cellular and residential telephones, thereby causing Plaintiff and the Classes to incur certain telephone charges or reduce telephone time for which Plaintiff and the Class members paid, and by invading the privacy of Plaintiff and the Classes.

66. The exact size of each of the Classes is presently unknown but can be ascertained through a review of Defendants’ records and the NDNC, and it is clear that individual joinder is impracticable. Defendants made telephone calls to thousands of consumers who fall into the definition of each of the Classes.

67. There are many questions of law and fact common to the claims of Plaintiff and the Classes, and those questions predominate over any questions that may affect individual members of the Classes.

68. Common questions for the Classes include, without limitation:

- a. Whether Defendants' conduct violated the TCPA and MD TCPA;
- b. Whether Defendants systematically made telephone calls or transmitted text messages to consumers residential or cellular telephones by making telemarketing calls and transmitting text messages to telephone numbers that had been registered on the NDNC list; and
- c. Whether Defendants systematically made telephone calls or transmitted text messages to consumers residential or cellular telephones by making telemarketing calls and transmitting text messages to telephone numbers that had been registered on its internal DNC list; and
- d. Whether the acts of insurance agents working for USHealth who violated the TCPA may be imputed to the Defendants; and
- e. Whether Defendants and their agents should be enjoined from engaging in such conduct in the future.

69. Plaintiff's claims are typical of the claims of the other members of the Classes. Plaintiff and the Classes sustained damages as a result of Defendants' uniform wrongful conduct during transactions with Plaintiff and the Classes.

70. Plaintiff will fairly and adequately represent and protect the interests of the Classes and has retained counsel competent and experienced in complex class actions.

71. Plaintiff has no interest antagonistic to those of the Classes, and Defendants have no defenses unique to Plaintiff. This class action is appropriate for class certification because

Defendants have acted or refused to act on grounds generally applicable to the Classes as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the Classes and making final injunctive relief appropriate with respect to the Classes as a whole.

72. Defendants' practices challenged herein apply to and affect the Class members uniformly, and Plaintiff's challenge to those practices hinges on Defendants' conduct with respect to the Classes as a whole, not on facts or law applicable only to Plaintiff.

73. This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy given that joinder of all parties is impracticable.

74. The damages suffered by the individual members of the Classes will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions.

75. Thus, without class certification it would be virtually impossible for the individual members of the Classes to obtain effective relief from Defendants' misconduct.

76. Even if members of the Classes could sustain such individual litigation, it would still not be preferable to a class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint.

77. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court. Economies of time, effort and expense will be fostered, and uniformity of decisions ensured.

**FIRST CAUSE OF ACTION
VIOLATIONS OF THE TCPA**

47 U.S.C. § 227(c), 47 C.F.R. 64.1200(c)(2), and 47 C.F.R. 64.1200(e)

78. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

79. Plaintiff and Members of the NDNC Class registered their home landline or cellular telephones on the National Do Not Call list.

80. Plaintiff and members of the NDNC Class received telemarketing calls and texts placed by or on behalf of Defendants while listed on the National Do-Not-Call list, without having provided prior express written consent and in violation of the NDNC.

81. The foregoing acts by or on behalf of Defendants constitute numerous and multiple violations of the TCPA, including but not limited to the above-cited provisions of 47 U.S.C. § 227, *et seq.*

82. Defendants' conduct invaded the privacy of Plaintiff and the NDNC Class.

83. As a result of Defendants' violations of the TCPA, Plaintiff and the NDNC Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

84. Plaintiff and the NDNC Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA**

47 U.S.C. § 227(c)

85. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

86. As a result of knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(c), by Defendants, Plaintiff and members of the NDNC Class are entitled to treble damages of up to

\$1,500 for each and every call made to their cellular telephone numbers in violation of the statute, pursuant to 47 U.S.C. § 227(c)(5)(B).

THIRD CAUSE OF ACTION
VIOLATIONS OF THE TCPA
47 U.S.C. § 227(c), 47 C.F.R. 64.1200(d), 47 C.F.R. 64.1200(e)

87. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

88. Plaintiff and the Members of the IDNC Class received telemarketing calls and texts placed by or on behalf of Defendants, on their residential landline or cellular telephones, after they had requested that such calls cease, in violation of the IDNC.

89. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the TCPA, including but not limited to the above-cited provisions of 47 U.S.C. § 227, *et seq.*

90. Defendants' conduct invaded the privacy of Plaintiff and the IDNC Class.

91. As a result of Defendants' violations of the TCPA, Plaintiff and the NDNC Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).

92. Plaintiff and the NDNC Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA
47 U.S.C. § 227(c)

93. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

94. As a result of knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(c), by Defendants, Plaintiff and members of the IDNC Class are entitled to treble damages of up to

\$1,500 for each and every call made to their cellular telephone numbers in violation of the statute, pursuant to 47 U.S.C. § 227(c)(5)(B).

FIFTH CAUSE OF ACTION
VIOLATIONS OF THE MD TCPA
Md. Code, Com. Law, § 14-3201

95. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

96. Plaintiff and Members of the NDNC Class registered their home landline or cellular telephones on the National Do Not Call list.

97. Plaintiff and members of the NDNC Class received telemarketing calls and texts placed by or on behalf of Defendants while listed on the National Do-Not-Call list, without having provided prior express written consent and in violation of the NDNC.

98. The foregoing acts by or on behalf of Defendants constitute numerous and multiple violations of the TCPA, including but not limited to the above-cited provisions of 47 U.S.C. § 227, *et seq.*

99. Defendants' conduct invaded the privacy of Plaintiff and the NDNC Class.

100. As a result of Defendants' violations of the TCPA, Plaintiff and the NDNC Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to Md. Code. § 14-3202.

101. Plaintiff and the NDNC Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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Md. Code, Com. Law, § 14-3201

102. Plaintiff re-alleges and incorporates by reference each preceding paragraph as though fully set forth herein.

103. Plaintiff and the Members of the IDNC Class received telemarketing calls and texts placed by or on behalf of Defendants, on their residential landline or cellular telephones, after they had requested that such calls cease, in violation of the IDNC.

104. The foregoing acts and omissions of Defendants constitute numerous and multiple violations of the TCPA, including but not limited to the above-cited provisions of 47 U.S.C. § 227, *et seq.*

105. Defendants' conduct invaded the privacy of Plaintiff and the IDNC Class.

106. As a result of Defendants' violations of the TCPA, Plaintiff and the NDNC Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, and reasonable attorneys' fees and costs, pursuant Md. Code. § 14-3202.

107. Plaintiff and the NDNC Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

JURY DEMAND

Plaintiff and the Classes demand a jury trial on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff, individually and on behalf of the Classes, respectfully requests the following relief:

a. An order certifying this matter as a class action with Plaintiff as Class Representative, and designating Washington Global Law Group PLLC and Berger Montague, P.C. as Class Counsel;

b. An award of actual or statutory damages for each and every violation to each member of the Classes pursuant to 47 U.S.C. § 227(c)(5)(B), and MD. Code, Com. Law, § 14-3202;

- c. An award of treble actual or statutory damages for each and every knowing and/or willful violation to each member of the Classes pursuant to 47 U.S.C § 227(c)(5)(B);
- d. Injunctive relief prohibiting Defendants' conduct complained of herein, pursuant to 47 U.S.C. § 227(c)(5);
- e. An award to Plaintiff and the Classes for their reasonable costs and expenses incurred in this action, including attorney's fees and expert fees to the full extent permitted by law, including without limitation Md. Code, Com. Law, § 14-3202;
- f. Pre-judgment and post-judgment interest on monetary relief; and
- g. All other and further relief as the Court deems necessary, just and proper.

Dated: February 26, 2019

Respectfully submitted,

/s/ Arthur Stock

Michael Dell'Angelo (admitted *pro hac*)

Arthur Stock (admitted *pro hac*)

Lane L. Vines (admitted *pro hac*)

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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of February, 2019, I electronically filed the foregoing Amended Class Action Complaint with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filings to all persons registered on the CM/ECF system for this matter.

/s/ Arthur Stock
Arthur Stock