

1 David J. McGlothlin, Esq. (SBN 026059)
david@kazlg.com

2 Ryan L. McBride, Esq. (SBN 032001)
3 ryan@kazlg.com

4 **Kazerouni Law Group, APC**
2633 E. Indian School Road, Ste 460
5 Phoenix, AZ 85016
6 Phone: 800-400-6808
7 Fax: 800-520-5523

8 *Attorneys for Plaintiff*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA, PHOENIX DIVISION**

11 Richard Winters, Jr., individually and) Case No.
12 on behalf of all others similarly situated,))

13 Plaintiff,)

14 vs.)

15 Grand Caribbean Cruises, Inc.,)

16 Defendant.)

) **CLASS ACTION**

) **COMPLAINT FOR VIOLATIONS**
) **OF:**

- 17) 1. NEGLIGENT VIOLATIONS
- 18) OF THE TELEPHONE
- 19) CONSUMER PROTECTION
- 20) ACT [47 U.S.C. §227(b)]
- 21) 2. WILLFUL VIOLATIONS
- 22) OF THE TELEPHONE
- 23) CONSUMER PROTECTION
- 24) ACT [47 U.S.C. §227(b)]
- 25) 3. NEGLIGENT VIOLATIONS
- 26) OF THE TELEPHONE
- 27) CONSUMER PROTECTION
- 28) ACT [47 U.S.C. §227(c)]
-) 4. WILLFUL VIOLATIONS
-) OF THE TELEPHONE
-) CONSUMER PROTECTION
-) ACT [47 U.S.C. §227(c)]

) **DEMAND FOR JURY TRIAL**

1 Plaintiff RICHARD WINTERS, JR. (“Plaintiff”), individually and on
2 behalf of all others similarly situated, alleges the following upon information and
3 belief based upon personal knowledge:

4
5 **NATURE OF THE CASE**

6 1. Plaintiff brings this action individually and on behalf of all others
7 similarly situated seeking damages and any other available legal or equitable
8 remedies resulting from the illegal actions of GRAND CARIBBEAN CRUISES,
9 INC. (“Defendant”), in negligently, knowingly, and/or willfully contacting
10 Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer
11 Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related regulations,
12 specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s
13 privacy.

14 **JURISDICTION & VENUE**

15 2. Jurisdiction is proper under *28 U.S.C. § 1332(d)(2)* because Plaintiff,
16 a resident of Arizona, seeks relief on behalf of a Class, which will result in at
17 least one class member belonging to a different state than that of Defendant, who
18 is a Florida resident. Plaintiff also seeks up to \$1,500.00 in damages for each call,
19 in violation of the TCPA, which, when aggregated among a proposed class in the
20 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
21 Therefore, both diversity jurisdiction and the damages threshold under the Class
22 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has
23 jurisdiction.

24 3. Jurisdiction is also proper because there exists a federal question
25 based on the fact that Plaintiff’s claims arise from the Telephone Consumer
26 Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”), a federal statute.

27 4. Venue is proper in the United States District Court for the District of
28 Arizona pursuant to *28 U.S.C. § 1391(b)(2)* because Defendant does business

1 within the State of Arizona and Plaintiff resides within the County of Maricopa.

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Mesa, Arizona and is a
4 “person” as defined by *47 U.S.C. § 153 (39)*.

5 6. Defendant is a Cruise Line and is a “person” as defined by *47 U.S.C.*
6 *§ 153 (39)*.

7 7. The above-named Defendant, and their subsidiaries and agents, are
8 collectively referred to as “Defendant.”

9 8. Plaintiff is informed and believes that at all relevant times, each and
10 every Defendant was acting as an agent and/or employee of each of the other
11 Defendants and was acting within the course and scope of said agency and/or
12 employment with the full knowledge and consent of each of the other Defendants.
13 Plaintiff is informed and believes that each of the acts and/or omissions
14 complained of herein was made known to, and ratified by, each of the other
15 Defendants.

16 **FACTUAL ALLEGATIONS**

17 9. Beginning in or around July 2019, Defendant contacted Plaintiff on
18 Plaintiff’s cellular telephone number ending in -6678, in an attempt to solicit
19 Plaintiff to purchase Defendant’s services.

20 10. Defendant used an “automatic telephone dialing system” as defined
21 by *47 U.S.C. § 227(a)(1)* to place its call to Plaintiff seeking to solicit its services.

22 11. Defendant contacted or attempted to contact Plaintiff from telephone
23 number (480)781-4192 confirmed to be Defendant’s number.

24 12. Defendant’s calls constituted calls that were not for emergency
25 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

26 13. Defendant’s calls were placed to telephone number assigned to a
27 cellular telephone service for which Plaintiff incurs a charge for incoming calls
28 pursuant to *47 U.S.C. § 227(b)(1)*.

1 14. During all relevant times, Defendant did not possess Plaintiff's
2 "prior express consent" to receive calls using an automatic telephone dialing
3 system on his cellular telephone pursuant to *47 U.S.C. § 227(b)(1)(A)*.

4 15. Further, Plaintiff's cellular telephone number ending in -6678 has
5 been on the National Do-Not-Call Registry since at least June 2019.

6 16. Defendant placed multiple calls soliciting its business to Plaintiff on
7 his cellular telephone ending in -6678 between on or around July of 2019.

8 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
9 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

10 18. Plaintiff received multiple solicitation calls from Defendant within a
11 12-month period.

12 19. Defendant continued to call Plaintiff in an attempt to solicit its
13 services and in violation of the National Do-Not-Call provisions of the TCPA.

14 20. Upon information and belief, and based on Plaintiff's experiences of
15 being called by Defendant after being on the National Do-Not-Call list for several
16 years prior to Defendant's initial call, and at all relevant times, Defendant failed
17 to establish and implement reasonable practices and procedures to effectively
18 prevent telephone solicitations in violation of the regulations prescribed under 47
19 U.S.C. § 227(c)(5).

20 **CLASS ALLEGATIONS**

21 21. Plaintiff brings this action individually and on behalf of all others
22 similarly situated, as a member the two proposed classes (hereafter, jointly, "The
23 Classes").

24 22. The class concerning the ATDS claim for no prior express consent
25 (hereafter "The ATDS Class") is defined as follows:

26 All persons within the United States who received any
27 solicitation/telemarketing telephone calls from
28 Defendants to said person's cellular telephone made

1 through the use of any automatic telephone dialing
2 system or an artificial or prerecorded voice and such
3 person had not previously consented to receiving such
4 calls within the four years prior to the filing of this
Complaint

5 23. The class concerning the National Do-Not-Call violation (hereafter
6 “The DNC Class”) is defined as follows:

7
8 All persons within the United States registered on the
9 National Do-Not-Call Registry for at least 30 days, who
10 had not granted Defendants prior express consent nor
11 had a prior established business relationship, who
12 received more than one call made by or on behalf of
13 Defendants that promoted Defendants’ products or
services, within any twelve-month period, within four
years prior to the filing of the complaint.

14 24. Plaintiff represents, and is a member of, The ATDS Class, consisting
15 of all persons within the United States who received any collection telephone
16 calls from Defendant to said person’s cellular telephone made through the use of
17 any automatic telephone dialing system or an artificial or prerecorded voice and
18 such person had not previously not provided their cellular telephone number to
19 Defendant within the four years prior to the filing of this Complaint.

20 25. Plaintiff represents, and is a member of, The DNC Class, consisting
21 of all persons within the United States registered on the National Do-Not-Call
22 Registry for at least 30 days, who had not granted Defendant prior express
23 consent nor had a prior established business relationship, who received more than
24 one call made by or on behalf of Defendant that promoted Defendant’s products
25 or services, within any twelve-month period, within four years prior to the filing
26 of the complaint.

27 26. Defendant, including its employees and agents, is excluded from The
28 Classes. Plaintiff does not know the number of members in The Classes, but

1 believes the Class members number in the thousands, if not more. Thus, this
2 matter should be certified as a Class Action to assist in the expeditious litigation
3 of the matter.

4 27. The Classes are so numerous that the individual joinder of all of its
5 members is impractical. While the exact number and identities of The Class
6 members are unknown to Plaintiff at this time and can only be ascertained
7 through appropriate discovery, Plaintiff is informed and believes and thereon
8 alleges that The Classes includes thousands of members. Plaintiff alleges that
9 The Class members may be ascertained by the records maintained by Defendant.

10 28. Plaintiff and members of The ATDS Class were harmed by the acts
11 of Defendant in at least the following ways: Defendant illegally contacted
12 Plaintiff and ATDS Class members via their cellular telephones thereby causing
13 Plaintiff and ATDS Class members to incur certain charges or reduced telephone
14 time for which Plaintiff and ATDS Class members had previously paid by having
15 to retrieve or administer messages left by Defendant during those illegal calls, and
16 invading the privacy of said Plaintiff and ATDS Class members.

17 29. Common questions of fact and law exist as to all members of The
18 ATDS Class which predominate over any questions affecting only individual
19 members of The ATDS Class. These common legal and factual questions, which
20 do not vary between ATDS Class members, and which may be determined
21 without reference to the individual circumstances of any ATDS Class members,
22 include, but are not limited to, the following:

- 23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant made any telemarketing/solicitation call
25 (other than a call made for emergency purposes or made with
26 the prior express consent of the called party) to a ATDS Class
27 member using any automatic telephone dialing system or any
28 artificial or prerecorded voice to any telephone number

1 assigned to a cellular telephone service;

2 b. Whether Plaintiff and the ATDS Class members were
3 damaged thereby, and the extent of damages for such
4 violation; and

5 c. Whether Defendant should be enjoined from engaging in such
6 conduct in the future.

7 30. As a person that received numerous telemarketing/solicitation calls
8 from Defendant using an automatic telephone dialing system or an artificial or
9 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
10 claims that are typical of The ATDS Class.

11 31. Plaintiff and members of The DNC Class were harmed by the acts of
12 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
13 and DNC Class members via their telephones for solicitation purposes, thereby
14 invading the privacy of said Plaintiff and the DNC Class members whose
15 telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the
16 DNC Class members were damaged thereby.

17 32. Common questions of fact and law exist as to all members of The
18 DNC Class which predominate over any questions affecting only individual
19 members of The DNC Class. These common legal and factual questions, which
20 do not vary between DNC Class members, and which may be determined without
21 reference to the individual circumstances of any DNC Class members, include,
22 but are not limited to, the following:

23 a. Whether, within the four years prior to the filing of this
24 Complaint, Defendant or its agents placed more than one
25 solicitation call to the members of the DNC Class whose
26 telephone numbers were on the National Do-Not-Call Registry
27 and who had not granted prior express consent to Defendant
28 and did not have an established business relationship with

1 Defendants;

- 2 b. Whether Defendant obtained prior express written consent to
3 place solicitation calls to Plaintiff or the DNC Class members'
4 telephones;
- 5 c. Whether Plaintiff and the DNC Class member were damaged
6 thereby, and the extent of damages for such violation; and
- 7 d. Whether Defendant should be enjoined from engaging in such
8 conduct in the future.

9 33. As a person that received numerous solicitation calls from Defendant
10 within a 12-month period, who had not granted Defendant prior express consent
11 and did not have an established business relationship with Defendant, Plaintiff is
12 asserting claims that are typical of the DNC Class.

13 34. Plaintiff will fairly and adequately protect the interests of the
14 members of The Classes. Plaintiff has retained attorneys experienced in the
15 prosecution of class actions.

16 35. A class action is superior to other available methods of fair and
17 efficient adjudication of this controversy, since individual litigation of the claims
18 of all Classes members is impracticable. Even if every Classes member could
19 afford individual litigation, the court system could not. It would be unduly
20 burdensome to the courts in which individual litigation of numerous issues would
21 proceed. Individualized litigation would also present the potential for varying,
22 inconsistent, or contradictory judgments and would magnify the delay and
23 expense to all parties and to the court system resulting from multiple trials of the
24 same complex factual issues. By contrast, the conduct of this action as a class
25 action presents fewer management difficulties, conserves the resources of the
26 parties and of the court system, and protects the rights of each Class member.

27 36. The prosecution of separate actions by individual Class members
28 would create a risk of adjudications with respect to them that would, as a practical

1 matter, be dispositive of the interests of the other Class members not parties to
2 such adjudications or that would substantially impair or impede the ability of such
3 non-party Class members to protect their interests.

4 37. Defendants have acted or refused to act in respects generally
5 applicable to The Classes, thereby making appropriate final and injunctive relief
6 with regard to the members of the Classes as a whole.

7 **FIRST CAUSE OF ACTION**

8 **Negligent Violations of the Telephone Consumer Protection Act**

9 **47 U.S.C. §227(b).**

10 **On Behalf of the ATDS Class**

11 38. Plaintiff repeats and incorporates by reference into this cause of
12 action the allegations set forth in the paragraphs above.

13 39. The foregoing acts and omissions of Defendant constitutes numerous
14 and multiple negligent violations of the TCPA, including but not limited to each
15 and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in
16 particular *47 U.S.C. § 227 (b)(1)(A)*.

17 40. As a result of Defendant's negligent violations of *47 U.S.C. §*
18 *227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in
19 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
20 *227(b)(3)(B)*.

21 41. Plaintiff and the ATDS Class members are also entitled to and seek
22 injunctive relief prohibiting such conduct in the future.

23 **SECOND CAUSE OF ACTION**

24 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

25 **Act**

26 **47 U.S.C. §227(b)**

27 **On Behalf of the ATDS Class**

28 42. Plaintiff repeats and incorporates by reference into this cause of

1 action the allegations set forth in the paragraphs above.

2 43. The foregoing acts and omissions of Defendant constitutes numerous
3 and multiple knowing and/or willful violations of the TCPA, including but not
4 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
5 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

6 44. As a result of Defendant's knowing and/or willful violations of *47*
7 *U.S.C. § 227(b)*, Plaintiff and the ATDS Class members are entitled an award of
8 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
9 *U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

10 45. Plaintiff and the Class members are also entitled to and seek
11 injunctive relief prohibiting such conduct in the future.

12 **THIRD CAUSE OF ACTION**

13 **Negligent Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. §227(c)**

15 **On Behalf of the DNC Class**

16 46. Plaintiff repeats and incorporates by reference into this cause of
17 action the allegations set forth in the paragraphs above.

18 47. The foregoing acts and omissions of Defendant constitutes numerous
19 and multiple negligent violations of the TCPA, including but not limited to each
20 and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in
21 particular *47 U.S.C. § 227 (c)(5)*.

22 48. As a result of Defendant's negligent violations of *47 U.S.C. § 227(c)*,
23 Plaintiff and the DNC Class Members are entitled an award of \$500.00 in
24 statutory damages, for each and every violation, pursuant to *47 U.S.C. §*
25 *227(c)(5)(B)*.

26 49. Plaintiff and the DNC Class members are also entitled to and seek
27 injunctive relief prohibiting such conduct in the future.

28

1 **FOURTH CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

3 **Act**

4 **47 U.S.C. §227 et seq.**

5 **On Behalf of the DNC Class**

6 50. Plaintiff repeats and incorporates by reference into this cause of
7 action the allegations set forth in the paragraphs above.

8 51. The foregoing acts and omissions of Defendant constitutes numerous
9 and multiple knowing and/or willful violations of the TCPA, including but not
10 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*,
11 in particular *47 U.S.C. § 227 (c)(5)*.

12 52. As a result of Defendant's knowing and/or willful violations of *47*
13 *U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of
14 \$1,500.00 in statutory damages, for each and every violation, pursuant to *47*
15 *U.S.C. § 227(c)(5)*.

16 53. Plaintiff and the DNC Class members are also entitled to and seek
17 injunctive relief prohibiting such conduct in the future.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

20 **FIRST CAUSE OF ACTION**

21 **Negligent Violations of the Telephone Consumer Protection Act**

22 **47 U.S.C. §227(b)**

- 23 • As a result of Defendant's negligent violations of *47 U.S.C.*
24 *§227(b)(1)*, Plaintiff and the ATDS Class members are entitled to
25 and request \$500 in statutory damages, for each and every violation,
26 pursuant to *47 U.S.C. 227(b)(3)(B)*.
27 • Any and all other relief that the Court deems just and proper.
28

1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

3 **Act**

4 **47 U.S.C. §227(b)**

- 5 • As a result of Defendant’s willful and/or knowing violations of *47*
- 6 *U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class members are
- 7 entitled to and request treble damages, as provided by statute, up to
- 8 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
- 9 *§227(b)(3)(B)* and *47 U.S.C. §227(b)(3)(C)*.
- 10 • Any and all other relief that the Court deems just and proper.

11 **THIRD CAUSE OF ACTION**

12 **Negligent Violations of the Telephone Consumer Protection Act**

13 **47 U.S.C. §227(c)**

- 14 • As a result of Defendant’s negligent violations of *47 U.S.C.*
- 15 *§227(c)(5)*, Plaintiff and the DNC Class members are entitled to and
- 16 request \$500 in statutory damages, for each and every violation,
- 17 pursuant to *47 U.S.C. 227(c)(5)*.
- 18 • Any and all other relief that the Court deems just and proper.

19 **FOURTH CAUSE OF ACTION**

20 **Knowing and/or Willful Violations of the Telephone Consumer Protection**

21 **Act**

22 **47 U.S.C. §227(c)**

- 23 • As a result of Defendant’s willful and/or knowing violations of *47*
- 24 *U.S.C. §227(c)(5)*, Plaintiff and the DNC Class members are
- 25 entitled to and request treble damages, as provided by statute, up to
- 26 \$1,500, for each and every violation, pursuant to *47 U.S.C.*
- 27 *§227(c)(5)*.
- 28 • Any and all other relief that the Court deems just and proper.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

54. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 22nd Day of January, 2020.

Kazerouni Law Group, APC

By: /s/ Ryan L. McBride
Ryan L. McBride, Esq.

Counsel for Plaintiff and the Proposed Class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Grand Caribbean Cruises Hit with Class Action Over Allegedly Illicit Spam Calls](#)
