

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
COURT FILE NO.: 18-cv-590**

Anna R. Holl, on behalf of herself and all
others similarly situated,

Plaintiff,

v.

Capreit Residential Management, LLC,

Defendant.

CLASS ACTION COMPLAINT

WITH JURY TRIAL DEMANDED

Anna R. Holl (hereinafter “Plaintiff”), individually and on behalf of all other individuals similarly situated, brings this class action complaint against Defendant Capreit Residential Management, LLC (hereinafter “Defendant”), for injunctive relief, damages, and any other available legal or equitable remedies resulting from Defendant’s contacting Plaintiff and Class members through Short Message Service (“SMS”) on Plaintiff’s and Class members’ cellular telephones, in violation of 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s and Class members’ privacy.

INTRODUCTION

1. According to a study by the Pew Research Center, 69% of cellular users who use SMS receive unwanted spam. Jan L. Boyles and Lee Rainie, *Mobile Phone Problems*, Pew Research Center, Internet & Technology (Aug. 2, 2012), <http://www.pewinternet.org/2012/08/02/mobile-phone-problems/>.

2. “Voluminous consumer complaints about abuses of telephone technology... prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may contact them, and made specific findings that technologies that might allow consumers to avoid receiving such calls or SMS “are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.” TCPA, Pub. L. No. 102-243, § 11. Toward this end, Congress found that banning such automated or prerecorded calls and SMS, “except when the receiving party consents... or when such calls [or SMS] are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.” *Id* at § 12.

JURISDICTION AND VENUE

4. This Court has Jurisdiction over this class action lawsuit under 47 U.S.C. § 227, 28 U.S.C. §§ 1331, and 1367.
5. This Court has personal jurisdiction over Defendant because Defendant conducts substantial business in Minnesota, Defendant is registered to do business in Minnesota, and the acts alleged herein originated in this District.
6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the conduct at issue occurred in this District, Plaintiff resides in this District, and Defendant conducts substantial business in this District.

PARTIES

7. Plaintiff is, and was at all times herein relevant, a resident of the State of Minnesota, City of Eden Prairie, County of Hennepin. Plaintiff is, and was at all times herein relevant, a “person” as defined by 47 U.S.C. § 153(39).
8. Defendant is a “real estate operating company that owns and manages apartment communities, such as the Minneapolis Grand Apartment Complex, throughout the United States” *see* <https://www.capreit.com/who-we-are>, organized and existing under the laws of the State of Maryland, with its principal office located at 11200 Rockville Pike, Suite 100, Rockville, Maryland 20852; Defendant is, and was at all times herein relevant, a “person,” as defined by 47 U.S.C. § 153(39).

PLAINTIFF’S FACTUAL ALLEGATIONS

9. In recent years, marketers who have often felt stymied by federal laws limiting solicitation by telephone, facsimile machine, and e-mail have increasingly looked to alternative technologies through which to cheaply send solicitations. SMS is one such alternative.
10. The term “SMS” describes a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.
11. Unlike more conventional advertisements, SMS can actually cost their recipients money because cellular telephone users frequently pay their respective wireless service providers either for each SMS they receive or for the general ability to send and receive such, regardless of whether the SMS is authorized.

12. “SMS” are “calls” within the context of the TCPA.

13. The TCPA states, in part:

It shall be unlawful... (A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice... (iii) to any telephone number assigned to a... cellular telephone.

47 U.S.C. § 227(b)(1).

14. The TCPA defines “telemarketing call,” or “telephone solicitation,” as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of... goods, or services, which is transmitted to any person.” 47 U.S.C. § 227(a)(4).

15. The TCPA defines an “automatic telephone dialing system” as “equipment which has 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.” 47 U.S.C. § 227(a)(1).

16. Before making a telephone solicitation using an automatic telephone dialing system, one must receive “prior express consent” to do so from the called party. “Prior express consent” must:

- Be in the form of an agreement in writing, bearing the written or electronic signature of the person providing consent;
- Specify the telephone number to which the person is consenting to be called; and
- Clearly and conspicuously authorize the company to call the person using an autodialer system or prerecorded message for telemarketing purposes.

27 F.R. § 64.1200(f)(8).

17. On November 2, 2017, Plaintiff called 612-807-1873, the telephone number associated with the Minneapolis Grand Apartment Complex and heard the following, prerecorded message:

In case we miss your call or get disconnected, we'd like your consent to be contacted by our property via SMS text with more marketing information. Press "1" to agree, press "2" to decline.

18. Unwilling to consent, Plaintiff then entered the number "2" on her cellular telephone.
19. Nevertheless, at 9:10 a.m. on November 2, 2017, Defendant sent or transmitted, or had sent or transmitted on its behalf, an unsolicited and impersonal SMS to Plaintiff's cellular telephone, phone number ending "1832" which read,

"Hello, are you still interested in Mpls Grand Apts?"

20. Defendant sent or transmitted, or had sent or transmitted on its behalf, this unsolicited SMS to Plaintiff's cellular telephone from telephone number (612) 315-8202.
21. Defendant sent or transmitted, or had sent or transmitted on its behalf, the same or substantially the same SMS *en masse* to Class members' cellular telephones.
22. Upon information and belief, Defendant sent or transmitted, or had sent or transmitted on its behalf, the SMS to Plaintiff's and Class members' cellular telephones using an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a)(1).

23. Defendant's SMS to Plaintiff's and Class members' cellular telephones was done without consent to do so.
24. Defendant's unsolicited SMS to Plaintiff's and Class members' cellular telephones caused Plaintiff and Class members frustration, mental anguish, and out-of-pocket expense.

CLASS ACTION ALLEGATIONS

25. Plaintiff brings this action on behalf of herself and as a class action under the provisions of Rule 23(a), (b)(2), and (b)(3) of the Federal Rules of Civil Procedure.

The Class is defined as follows:

All persons in the United States and its Territories who received one or more SMS without having provided prior express consent, from, or on behalf of, Defendant.

26. Defendant and Defendant's members and employees are excluded from the class.
27. This action is properly maintainable as a class action. Members of the Class are so numerous that their individual joinder is impracticable. The precise number of members is unknown at this time, but is believed to be at least over 100. The true number of proposed members is, however, known by Defendant and, thus, Class members may be notified of the pendency of this action by first class mail, electronic, and published notice using information in Defendant's records.
28. A class action is superior to other methods for the fair and efficient adjudication of the claims asserted herein, and no unusual difficulties are likely to be encountered in the management of this class action. Additionally, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or

varying adjudications, establishing incompatible standards of conduct for Defendant.

29. Rule 23(a)(2) and Rule 23(b)(3) are both satisfied because there are questions of law and fact which are common to the Class and which predominate over questions affecting any individual Class member. The common questions include the following:
- a. Whether Defendant violated the TCPA by sending unauthorized SMS to Plaintiff and members of the Class;
 - b. Whether the equipment Defendant used to send SMS in question was an automatic telephone dialing system, as defined by the TCPA;
 - c. Whether such SMS were sent to telephone numbers assigned to cellular telephones;
 - d. Whether the means by which Defendant acquired Plaintiff's and Class members' cellular phone numbers clearly and conspicuously informed Class members they may receive advertisements or telemarketing messages by means of an automatic telephone dialing system;
 - e. Whether Defendant's actions were knowing or willful;
 - f. Whether Plaintiff and members of the Class are entitled to statutory damages under the TCPA;
 - g. Whether Plaintiff and members of the Class are entitled to treble damages based on Defendant's knowing or willful conduct; and
 - h. Whether Plaintiff and members of the Class are entitled to equitable relief, including, but not limited to, injunctive relief and restitution.
30. Plaintiff's claims and the claims of members of the Class all derive from a common nucleus of operative facts. That is, irrespective of the individual circumstances of

any Class members, liability in this matter will rise and fall with core issues related to Defendant's conduct.

31. Plaintiff's claims are typical of the claims of the Class members. Plaintiff has the same interest as all members of the Class in that the nature and character of the challenged conduct is the same.
32. Plaintiff will fairly and adequately represent and protect the interest of the Class. Plaintiff's interests are entirely consistent with, and not antagonistic to, those of the other members of the Class. Plaintiff has retained competent counsel experienced in the prosecution of consumer and class action litigation.
33. Defendant has acted or refused to act on grounds generally applicable to the Class, making injunctive and declaratory relief appropriate with respect to the Class as a whole.

TRIAL BY JURY

34. Plaintiff is entitled to, and hereby demands, a trial by jury. US Const. amend. VII; Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT - 47 U.S.C. § 227 *et seq.*

35. Plaintiff incorporates by reference all foregoing paragraphs as if fully stated herein.
36. Defendant sent or transmitted, or had sent or transmitted on its behalf, unsolicited SMS to Plaintiff's and Class member's cellular telephones.

37. The SMS sent to Plaintiff and members of the Class were sent using equipment that had the capacity to store telephone numbers retrieved from Defendant's database and to dial such numbers. By using such equipment, Defendant was able to effectively send SMS to cellular telephones *en masse* without human intervention.
38. Defendant sent or transmitted, or had sent or transmitted on its behalf, SMS to Plaintiff and members of the Class without receiving prior express consent to do so.
39. Defendant's aforementioned acts and omissions constitute knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*
40. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and Class members are entitled to an award of \$1,500.00 in statutory damages for each violation, pursuant to 47 U.S.C. § 227(b)(3)(C).
41. In the alternative, Defendant's aforementioned acts and omissions constitute negligent violations of 47 U.S.C. § 227 *et seq.*
42. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and Class members are entitled to an award of \$500.00 in statutory damages for each violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
43. Plaintiff and Class members are also entitled to, and hereby seek, actual damages and injunctive relief prohibiting such conduct in the future.

COUNT II.

INVASION OF PRIVACY – Intrusion Upon Seclusion

44. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

45. Defendant's conduct resulted in an intrusion upon Plaintiff's and Class members' right to seclusion and an invasion of Plaintiff's and Class members' privacy.
46. Defendant's conduct was highly offensive to Plaintiff and Class members and would be considered highly offensive to a reasonable person.
47. Defendant's conduct caused Plaintiff and Class members frustration, mental anguish, and out-of-pocket expense.
48. As a result of Defendant's intrusion, Plaintiff and Class members are entitled to actual damages as well as the costs associated with bringing these proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

- That the Court determine that this action may be maintained as a class action under Rules 23(a), 23(b)(2), and (b)(3) of the Federal Rules of Civil Procedure, that Plaintiff be certified as Class representative, and Plaintiff's counsel be appointed as counsel for the Class;
- That the unlawful conduct alleged herein be declared to be illegal and in violation of the TCPA;
- That Defendant be enjoined from engaging in the same or similar practices alleged herein;
- That Plaintiff and members of the Class recover damages, as provided by law, determined to have been sustained as to each of them, and that judgment be entered against Defendants on behalf of Plaintiff and members of the Class;
- That Plaintiff and members of the Class recover their costs of the suit, and attorneys' fees as allowed by law;
- That Plaintiff and members of the Class recover actual damages and costs for Defendant's invasions of privacy; and
- For such other and further relief as may be just and proper.

Dated this 1st day of March, 2018.

Respectfully submitted,

By: s/Thomas J. Lyons Jr.

Thomas J. Lyons, Jr., Esq.

Attorney I.D. #: 249646

Katelyn R. Cartier

Attorney I.D. #: 0398935

CONSUMER JUSTICE CENTER, P.A.

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Anna R. Hori, on behalf of herself and all others similarly situated

(b) County of Residence of First Listed Plaintiff Hennepin (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Thomas J. Lyons Jr., Esq., Consumer Justice Center P.A., 367 Commerce Court, Vadnais Heights, MN 55127, 651-770-9707, tommy@consumerjusticecenter.com

DEFENDANTS

Capreit Residential Management LLC

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. §§ 227 et seq.

Brief description of cause: Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE DOCKET NUMBER

DATE 03/01/2018 SIGNATURE OF ATTORNEY OF RECORD s/Thomas J. Lyons Jr.

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Capreit Residential Management Hit with Class Action Over Alleged Unsolicited Text Messages](#)
