

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MATTHEW KOHEN, individually and on
behalf of all others similarly situated,

CASE NO:

Plaintiff,

CLASS ACTION

v.

ULTIMATE SPORTS CAMP, LLC, and
JUNIOR ATHLETES, INC.,

Defendants.

CLASS ACTION COMPLAINT

Plaintiff, Matthew Kohen, individually, and on behalf of all those similarly situated, by and through his undersigned counsel, brings this class action against Defendants, Ultimate Sports Camp, LLC, (“Ultimate Sports Camp”) and Junior Athletes Inc. (“Junior Athletes”) (collectively “Defendants”), alleging violations of the Telephone Consumer Protection Act (*hereinafter* “TCPA”), 47 U.S.C. § 227, and in support thereof states as follows:

I. INTRODUCTION

1. This is a class action alleging violations of the TCPA resulting from Defendants’ unsolicited, harassing, autodialed text-messages, sent to the cellphones of Plaintiff and the class.
2. Defendants own and operate sports camps in New Jersey.
3. In its persistent efforts to solicit business, Defendants regularly engage in text-message-marketing campaigns, with no regard for the law or consumers’ privacy rights.
4. Plaintiff seeks to enjoin Defendants’ illegal conduct, which has resulted in an invasion of privacy, harassment, aggravation, and disruption of the daily lives of hundreds or

thousands of individuals, and statutory damages on behalf of himself and members of the Class as defined below, and any other available legal or equitable remedies.

II. PARTIES, JURISDICTION, AND VENUE

5. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Miami Dade County, Florida.

6. Defendant Ultimate Sports Camp is a New Jersey Corporation with its principal place of business at 1233 East 7th Street., Brooklyn, NY 11230. Ultimate Sports Camp's registered agent for service of process is Victor Gindi, 290 Roosevelt Ave., Oakhurst, NJ 07755.

7. Defendant Junior Athletes is a New York Corporation with its principal place of business at 2309-11 65th Street, Brooklyn, New York 11204.

8. Jurisdiction is proper under 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal statute.¹

9. This Court has personal jurisdiction over Defendants and venue is proper because the events giving rise to Plaintiff's claims occurred in Miami-Dade County, including the unwanted text-messages that Defendants sent or caused to be sent to Plaintiff's cellular phone using an automatic telephone dialing system.

III. THE TELEPHONE CONSUMER PROTECTION ACT

10. The TCPA regulates and restricts the use of automatic telephone dialing or texting systems ("ATDS"). These ATDS devices allow Defendants to send hundreds or thousands of text-messages almost instantly, without regard to the identity, consent, or privacy of the recipients.

11. Specifically, the TCPA provides that 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 See *Mims v. Arrow Fin. Services, LLC*, 132 S. Ct. 740, 744 (2012).

to make any call using an ATDS to any telephone number assigned to a cellphone other than a call made for emergency purposes or made with the prior express consent of the called party.

12. Importantly, consumers are entitled to the same consent-based protections for text-messages as well as calls.

13. Defendants bear the burden of showing that they obtained Plaintiff's prior express written consent before sending him the text-messages, and must show that a clear, unambiguous, and conspicuous written disclosure was provided to the individual.

14. The Federal Communications Commission ("FCC") has also repeatedly acknowledged the existence of vicarious or agency liability under the TCPA.

IV. FACTS

15. Plaintiff is and the Class member are "persons" as broadly defined by 47 U.S.C. § 153(39).

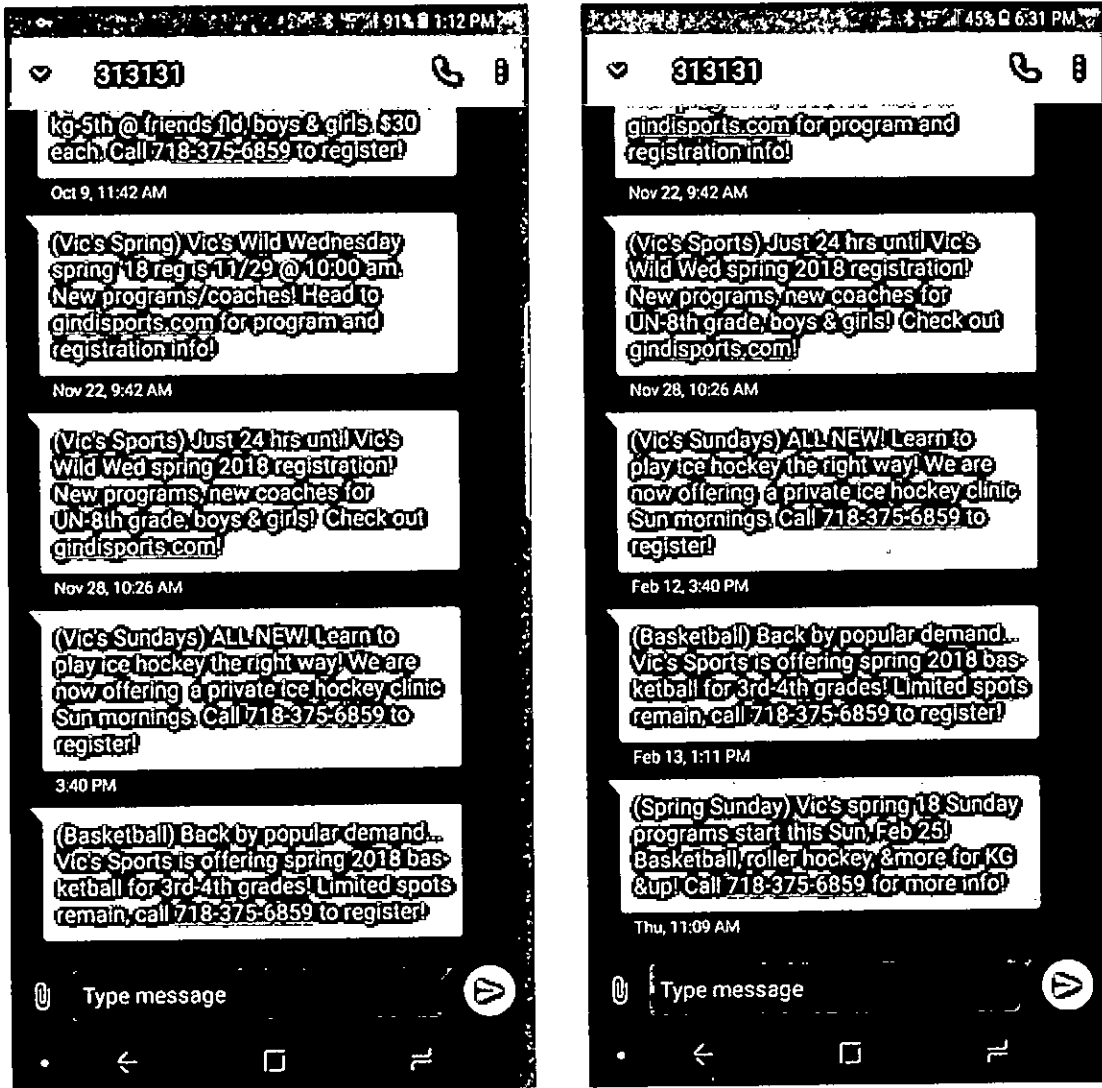
16. Defendants, in order to advertise, promote, and solicit business, obtained the cellphone numbers of Plaintiff and the Class members.

17. Defendants likely purchased these numbers from a person or company that buys and sells consumer data.

18. Regardless of how Defendants obtained the numbers, Defendants did not obtain the required express written consent to place calls or send text-messages to Plaintiff or the Class.

19. Despite lacking the requisite consent, Defendants then proceeded to send or cause others to send unsolicited telemarketing text-messages to Plaintiff and the Class; using automatic telephone dialing equipment.

20. Defendants sent Plaintiff over ten (10) unsolicited, automatic text-messages, including on October 9, 2017, November 22, 2017, twice on November 28, 2017, February 12, 2018, and February 13, 2018.



21. The incessant text messages Plaintiff received came from phone number 313131.

22. This six-digit, non-conventional phone number or "Short Code" indicates that Defendants used an Automatic to Peer ("A2P") technology, which is the precise type of ATDS technology that the TCPA regulates.

23. The generic nature of Defendants' text-messages, combined with the large number of messages sent by Defendants, further demonstrates that Defendants utilized an ("ATDS") to send the text-messages.

24. As seen in the images above, not only did Defendants send these unsolicited text-messages without prior express consent, but Defendants gave Plaintiff and the class no method by which to opt-out of receiving the text-messages.

25. As a result of Defendants' TCPA violations, Plaintiff and the class suffered damages including invasion of privacy, aggravation, annoyance, and intrusion.

26. All Defendants are directly, jointly, or vicariously liable for each such violation of the TCPA.

V. CLASS ACTION ALLEGATIONS

27. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3), on behalf of himself and a Class of others similarly situated defined as follows:

All persons in the United States who had one or more Vic's Sports Text-Messages sent to their cellular telephone number

Plaintiff anticipates the need to amend the class definition as discovery progresses

28. The following are excluded from the Class: 1) Defendants and their employees or agents; 2) Plaintiff's attorneys and their employees; 3) the Honorable Judge to whom this action is assigned and any member of the Judge's staff and immediate family; 4) claims for personal injury, wrongful death, and/or emotional distress.

29. **Numerosity:** The exact number of Class members is unknown and not readily available to Plaintiff at this time, but it is evident that joinder is impracticable. Based upon information and understanding, Defendants have sent automated text-messages to the cellphones of thousands of consumers throughout the United States without their prior express consent. The

members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable. Members of the Class can be identified, and Class membership ascertained, objectively through Defendants' records.

30. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class in that both Plaintiff and the Class sustained damages arising out of Defendants' uniform policies pertaining to sending automatic text-messages without obtaining prior express consent.

31. **Commonality:** There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are:

- i. Whether Defendants made non-emergency text-messages to Plaintiff's and Class members' cellular telephones using an ATDS;
- ii. Whether Defendants can meet their burden of showing that they obtained prior express written consent to send the text-messages at issue;
- iii. Whether Defendants' conduct was knowing and willful;
- iv. Whether Defendants are liable for damages, and the amount of such damages; and
- v. Whether Defendants should be enjoined from such conduct in the future.

The common questions in this case will have common answers. If Plaintiff's claim that Defendants routinely transmit text-messages to cellphones without obtaining prior express consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

32. **Adequacy of Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and Defendants have no defenses unique to Plaintiff. Plaintiff has retained counsel competent and experienced in complex class actions and has no interest antagonistic to those of the Class'.

33. ***Superiority & Manageability:*** Class proceedings in the instant matter are superior to all other available methods to ensure fair and efficient adjudication because joinder of all parties is impracticable. The damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would be virtually impossible for the individual members of the class to obtain effective relief from Defendants' misconduct. Even if members of the class 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. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court; economies of time, effort and expense will be fostered and uniformity of decisions ensured.

34. ***Ascertainability:*** Members of the class will be easily ascertained through Defendants' records, or the records of their agents.

COUNT I
VIOLATION OF THE TCPA. 47 U.S.C. § 227(B)

Plaintiff reaffirms, realleges, and incorporates by reference paragraphs 1-34 as if fully set forth herein.

35. Defendants, or third parties directed by Defendants, used equipment having the capacity to dial numbers without human intervention to send telemarketing text messages to the cellular telephones of Plaintiff and the other members of the Class defined above.

36. These text messages were sent without the prior express written consent of Plaintiff and the class.

37. Defendants have, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by using an ATDS to send non-emergency text messages to the cellular telephones of Plaintiff and the other members of the Class without their prior express consent.

38. As a result of the forgoing, Plaintiff and the class suffered damages.

39. Pursuant to § 227(b)(3) of the TCPA, Plaintiff and the other members of the putative Class are each entitled to a minimum of \$500.00 in damages for each violation.

WHEREFORE, Plaintiff, Matthew Kohen, on behalf of himself and all others similarly situated, prays the Court for an Order awarding:

- a. \$500.00 in statutory damages for each violation of the TCPA;
- b. A permanent injunction prohibiting Defendants from using an automatic telephone dialing system to call and text-message telephone numbers assigned to cellular telephones without the prior express consent of the called party;
- c. Litigation costs; and
- d. Such other and further relief as the Court deems proper.

COUNT II
KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA. 47 U.S.C. § 227(B)

Plaintiff reaffirms, realleges, and incorporates by reference paragraphs 1-34 as if fully set forth herein.

40. Defendants knew that they did not have prior express written consent to send marketing text-messages.

41. Defendants knew or should have known that under the TCPA they were prohibited from sending automatic text-messages to cellphones, without prior express consent.

42. Nonetheless, Defendants sent and continued to send unsolicited text-messages to the cellphones of Plaintiff and the Class.

43. Because Defendants knew or should have known that Plaintiff and the Class members had not given prior express consent to receive its autodialed text-messages to their

cellular telephones, the Court should treble the amount of statutory damages available to Plaintiff and the other members of the Class pursuant to § 227(b)(3) of the TCPA.

44. As a result of the forgoing, Plaintiff and the class suffered damages.

45. Pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C), Plaintiff and the Class members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation of the TCPA.

WHEREFORE, Plaintiff, Matthew Kohen, on behalf of himself and all others similarly situated, prays the Court for an Order awarding:

- a. \$1,500.00 in statutory damages for each knowing, or willful, violation of the TCPA;
- b. A permanent injunction prohibiting Defendants from using an automatic telephone dialing system to call and text-message telephone numbers assigned to cellular telephones without the prior express consent of the called party;
- c. Litigation costs; and
- d. Such other and further relief as the Court deems proper.

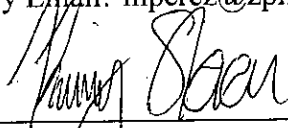
JURY TRIAL REQUEST

Plaintiff and the class respectfully requests a jury trial on all issues to triable.

Respectfully submitted this ^{sh}2 day of April 2018, by:

ZEBERSKY PAYNE, LLP
110 S.E. 6th Street, Suite 2150
Ft. Lauderdale, Florida 33301
Telephone: (954) 989-6333
Facsimile: (954) 989-7781
Primary Email: jshaw@zpllp.com
Secondary Email: mperez@zpllp.com

By



JORDAN A. SHAW, ESQ.
Fla Bar No. 111771
KIMBERLY A. SLAVEN
Fla. Bar No. 117964

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



MATTHEW KOHEN, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

ULTIMATE SPORTS CAMP, LLC, and JUNIOR ATHLETES, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) JUNIOR ATHLETES, INC. By Serving: Victor Gindi, CFO 1754 E. Fourth Street Brooklyn, NY 11223

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jordan A. Shaw, Esq. Zebersky Payne, LLP 110 SE 6th Street Ste. 2150 Ft. Lauderdale, FL 33301 jshaw@zpllp.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of Florida



MATTHEW KOHEN, individually and on behalf of all others similarly situated,

Plaintiff(s)

v.

ULTIMATE SPORTS CAMP, LLC, and JUNIOR ATHLETES, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) ULTIMATE SPORTS CAMP, LLC
By Serving: Victor Gindi, Registered Agent
290 Roosevelt Ave.
Oakhurst, NJ 07755

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Jordan A. Shaw, Esq.
Zebersky Payne, LLP
110 SE 6th Street
Ste. 2150
Ft. Lauderdale, FL 33301
jshaw@zpllp.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

JS 44 (Rev. 06/17) FLSD Revised 06/01/2017

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.) NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.

I. (a) PLAINTIFFS Matthew Kohen, individually and on behalf of all others similarly situated, DEFENDANTS ULTIMATE SPORTS CAMP, LLC, AND JUNIOR ATHLETES, INC.,

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

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.

(c) Attorneys (Firm Name, Address, and Telephone Number) Zebersky Payne, LLP - 110 SE 6th Street, Ste. 2150 Ft. Lauderdale, FL 33301 (954) 989-6333

Attorneys (If Known)

(d) Check County Where Action Arose: [X] MIAMI-DADE [] MONROE [] BROWARD [] PALM BEACH [] MARTIN [] ST. LUCIE [] INDIAN RIVER [] OKEECHOBEE [] HIGHLANDS

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

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

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

- Citizen of This State PTF [] 1 DEF [] 1
Citizen of Another State PTF [] 2 DEF [] 2
Citizen or Subject of a Foreign Country PTF [] 3 DEF [] 3
Incorporated or Principal Place of Business In This State PTF [] 4 DEF [] 4
Incorporated and Principal Place of Business In Another State PTF [] 5 DEF [] 5
Foreign Nation PTF [] 6 DEF [] 6

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

Click here for: Nature of Suit Code Descriptions

Grid of suit categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PERSONAL INJURY, 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 [X] 2 Removed from State Court [] 3 Re-filed (See VI below) [] 4 Reinstated or Reopened [] 5 Transferred from another district (specify) [] 6 Multidistrict Litigation Transfer [] 7 Appeal to District Judge from Magistrate Judgment [] 8 Multidistrict Litigation - Direct File [] 9 Remanded from Appellate Court []

VI. RELATED/ RE-FILED CASE(S)

(See instructions): a) Re-filed Case [] YES [X] NO

b) Related Cases [] YES [X] NO

JUDGE:

DOCKET NUMBER:

VII. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227

LENGTH OF TRIAL via days estimated (for both sides to try entire case)

VIII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 [X]

DEMAND \$

CHECK YES only if demanded in complaint:

UNKNOWN at this time

JURY DEMAND: [X] Yes [] No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

DATE April 5, 2018

SIGNATURE OF ATTORNEY OF RECORD

[Handwritten Signature]

FOR OFFICE USE ONLY RECEIPT #

AMOUNT

IFP

JUDGE

MAG JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Man Sues Ultimate Sports Camp, One Other Over Unwanted Text Message Advertisements](#)
