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15 **UNITED STATES DISTRICT COURT**
16 **SOUTHERN DISTRICT OF CALIFORNIA**

17 **ANDREW KUBIK,**
18 **INDIVIDUALLY AND ON**
19 **BEHALF OF ALL OTHERS**
20 **SIMILARLY SITUATED,**

21 Plaintiff,

22 v.

23 **BLUE STAR CRUISES LLC,**
24 Defendant.

Case No.: '17CV1785L AGS

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1. ANDREW KUBIK (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of BLUE STAR CRUISES LLC (“Defendant”), in negligently or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.
2. The TCPA was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – 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 call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls 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
 [b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls 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.

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1 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
2 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
purpose).

3 4. Congress also specifically found that “the evidence presented to the
4 Congress indicates that automated or prerecorded calls are a nuisance and an
5 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See
6 also, *Mims*, 132 S. Ct. at 744.

7 5. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
8 case regarding calls to a non-debtor similar to this one:

9 The Telephone Consumer Protection Act ... is well known for
10 its provisions limiting junk-fax transmissions. A less-litigated
11 part of the Act curtails the use of automated dialers and
12 prerecorded messages to cell phones, whose subscribers often
13 are billed by the minute as soon as the call is answered—and
14 routing a call to voicemail counts as answering the call. An
automated call to a landline phone can be an annoyance; an
automated call to a cell phone adds expense to annoyance.

15 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

16 **JURISDICTION AND VENUE**

17 6. This Court has federal question jurisdiction because this case arises out of
18 violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*,
132 S. Ct. 740 (2012).

19 7. Venue is proper pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
20 Plaintiffs reside in the County of San Diego, State of California which is
21 within this judicial district; (ii) the conduct complained of herein occurred
22 within this judicial district; and, (iii) Defendant conducted business within
23 this judicial district at all times relevant.

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PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of California. Plaintiff is, and at all times mentioned herein was, a “person” for purposes of the TCPA.

9. Defendant is a national cruise sales company and is a “person” for purposes of the TCPA. Defendant’s State of Incorporation and principal place of business are in the State of Florida.

FACTUAL ALLEGATIONS

10. Plaintiff alleges that at all times relevant herein Defendant conducted business within this judicial district.

11. At no time did Plaintiff ever enter into a business relationship with Defendant.

12. Beginning in 2017, Plaintiff began receiving telephonic communications from Defendant in order to solicit Plaintiff’s business.

13. As part of these solicitation efforts, Defendant’s automated voice asked Plaintiff three questions.

14. Only after answering these questions was Plaintiff transferred to a live agent.

15. Thereafter, Defendant’s agent inquired as to whether Plaintiff was interested in taking a cruise.

16. Plaintiff answered in the negative which prompted Defendant’s agent to end the call.

17. On information and belief, Plaintiff has not utilized Defendant’s services nor requested said services at any time.

18. Defendant used an “automatic telephone dialing system”, as defined by 47 U.S.C. § 227(a)(1) to send the artificial or prerecorded message to Plaintiff as prohibited by 47 U.S.C. § 227(b)(1)(A).

19. This ATDS has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator.

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1 20. These telephone communications constituted telephone solicitations as
2 defined by 47 U.S.C. § 227(a)(4).

3 21. Defendant’s calls constituted calls that were not for emergency purposes as
4 defined by 47 U.S.C. § 227(b)(1)(A)(i).

5 22. Defendant’s calls were placed to telephone number assigned to a cellular
6 telephone service for which Plaintiff incurs a charge for incoming calls
7 pursuant to 47 U.S.C. § 227(b)(1).

8 23. Plaintiff has never been in an “established business relationship” with
9 Defendant as defined by 47 U.S.C. 227(a)(2), nor has Plaintiff ever sought
10 Defendant’s services at any point in the past.

11 24. Defendant lacked “prior express consent” to contact Plaintiff on Plaintiff’s
12 cellular telephone as described herein.

13 25. These telephone communications by Defendant, or its agent, violated 47
14 U.S.C. § 227(b)(1).

15 26. Plaintiff suffered a concrete and real invasion of Plaintiff’s legally protected
16 privacy rights through Defendant’s violation of the TCPA.

17 **CLASS ACTION ALLEGATIONS**

18 27. Plaintiff brings this action on behalf of himself and on behalf of all others
19 similarly situated (“the Class”).

20 28. Plaintiff represents, and is a member of the Class, consisting of all persons
21 within the United States who received any telephonic communications from
22 Defendant or their agent/s and/or employee/s to said person’s cellular
23 telephone made through the use of any automatic telephone dialing system
24 or with an artificial or prerecorded message, which telephonic
25 communications was not sent for emergency purposes within the four years
26 prior to the filing of this Complaint.

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1 29. Defendant and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class, but believes the
3 Class members number in the hundreds of thousands, if not more. Thus, this
4 matter should be certified as a Class action to assist in the expeditious
5 litigation of this matter.

6 30. Plaintiff and members of the Class were harmed by the acts of Defendant in
7 at least the following ways: Defendants, either directly or through its agents,
8 illegally contacted Plaintiff and the Class members via their cellular
9 telephones by using an ATDS, thereby causing Plaintiff and the Class
10 members to incur certain cellular telephone charges or reduce cellular
11 telephone time for which Plaintiff and the Class members previously paid,
12 and invading the privacy of said Plaintiff and the Class members. Plaintiff
13 and the Class members were damaged thereby.

14 31. This suit seeks only damages and injunctive relief for recovery of economic
15 injury on behalf of the Class, and it expressly is not intended to request any
16 recovery for personal injury and claims related thereto. Plaintiff reserves the
17 right to expand the Class definition to seek recovery on behalf of additional
18 persons as warranted as facts are learned in further investigation and
19 discovery.

20 32. The joinder of the Class members is impractical and the disposition of their
21 claims in the Class action will provide substantial benefits both to the parties
22 and to the court. The Class can be identified through Defendants' records or
23 Defendants' agents' records.

24 33. There is a well-defined community of interest in the questions of law and
25 fact involved affecting the parties to be represented. The questions of law
26 and fact to the Class predominate over questions which may affect
27 individual Class members, including the following:
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- a) Whether, within the four years prior to the filing of this Complaint, Defendant or its agents initiated any telephonic communications to the Class (other than a message made for emergency purposes or made with the prior express consent of the called party) to a Class member using any automatic dialing and/or SMS texting system to any telephone number assigned to a cellular phone service;
- b) Whether Defendant can meet its burden of showing it obtained prior express consent (i.e., consent that is clearly and unmistakably stated);
- c) Whether Defendant’s conduct was knowing and/or willful;
- d) Whether Plaintiff and the Class members were damaged thereby, and the extent of damages for such violation; and
- e) Whether Defendants and its agents should be enjoined from engaging in such conduct in the future.

34. As a person that received at least one telephonic communication from Defendant’s ATDS without Plaintiff’s prior express consent, Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

35. Plaintiff and the members of the Class have all suffered irreparable harm as a result of the Defendants’ unlawful and wrongful conduct. Absent a class action, the Class will continue to face the potential for irreparable harm. In addition, these violations of law will be allowed to proceed without remedy and Defendants will likely continue such illegal conduct. Because of the size of the individual Class member’s claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein.

36. Plaintiff has retained counsel experienced in handling class action claims and claims involving violations of the Telephone Consumer Protection Act.

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37. A class action is a superior method for the fair and efficient adjudication of this controversy. Class-wide damages are essential to induce Defendants to comply with federal and California law. The interest of Class members in individually controlling the prosecution of separate claims against Defendants is small because the maximum statutory damages in an individual action for violation of privacy are minimal. Management of these claims is likely to present significantly fewer difficulties than those presented in many class claims.

38. Defendant has acted on grounds generally applicable to the Class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the Class as a whole.

FIRST CAUSE OF ACTION

NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

47 U.S.C. § 227 ET SEQ.

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

40. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

41. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

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

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SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

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

44. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

45. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and The Class Members pray for judgment as follows:

- Certifying the Class as requested herein;
- Providing such further relief as may be just and proper.

In addition, Plaintiff and The Class Members pray for further judgment as follows:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

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• Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

• Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227 ET SEQ.**

• As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

• Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

• Any other relief the Court may deem just and proper.

TRIAL BY JURY

47. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: September 4, 2017

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s Matthew M. Loker
MATTHEW M. LOKER, ESQ.
ATTORNEY 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
ANDREW KUBIK, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

DEFENDANTS
BLUE STAR CRUISES LLC,

(b) County of Residence of First Listed Plaintiff San Diego
(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)
Matthew M. Loker, Esq. (SBN: 279939)
KAZEROUNI LAW GROUP, APC
245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626 (800) 400-6808

Attorneys (If Known)
'17CV1785 L AGS

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: 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, TORTS, CIVIL RIGHTS, 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
6 Multidistrict Litigation

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:
Plaintiff alleges violations of the TCPA

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 09/04/2017 SIGNATURE OF ATTORNEY OF RECORD /s/ Matthew M. Loker

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING 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: [Blue Star Cruises Broadsided by TCPA Class Action Lawsuit](#)
