

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

KISON PATEL,)	
individually and on behalf of a class,)	
)	Case No. 15-cv-8174
Plaintiff,)	
)	
v.)	Hon. John Z. Lee
)	
AT&T SERVICES, INC., et al.)	
)	
Defendants.)	

**DEFENDANTS AT&T SERVICES, INC. AND ILLINOIS BELL TELEPHONE
COMPANY’S ANSWER TO PLAINTIFF’S COMPLAINT**

Pursuant to Rule 8 of the Federal Rules of Civil Procedure, Defendants AT&T Services, Inc. (“AT&T Services”) and Illinois Bell Telephone Company (“Illinois Bell” and collectively with AT&T Services “AT&T” or the “Defendants”), by and through their attorneys, hereby submit their answer to Plaintiff Kison Patel’s (“Plaintiff”) First Amended Class Action Complaint (the “Complaint”). No answer is required with respect to the headings, prayers for relief, and other contents of the Complaint that do not set forth allegations of fact and are not included within numbered paragraphs. Any such materials, as well as the allegations of the Complaint, are repeated herein solely for ease of reference.

RESPONSE TO ALLEGATIONS

1. Plaintiff, Kison Patel brings this action individually and on behalf of similarly situated persons against Defendant AT&T Services Inc., who called Plaintiff using a predictive dialer accompanied with a prerecorded that left a prerecorded voice message [*sic*] with text-to-speech, thereby violating the Telephone Consumer Protection Act, 47 U.S.C. § 227. On information and belief, the call AT&T Services, Inc. made was in regard to a Uverse contract involving Illinois Bell Telephone Company and a natural person, not Plaintiff.

RESPONSE:

AT&T admits that Plaintiff Kison Patel has filed this action individually and on behalf of a purported class against AT&T Services and Illinois Bell and states that the Complaint in the action speaks for itself. Except as so admitted, AT&T denies the allegations herein.

2. This Court has jurisdiction under 28 U.S.C. § 1331 (Federal Question) and 47 U.S.C. § 227 (“TCPA”). *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005).

RESPONSE:

AT&T admits that this Court has subject matter jurisdiction.

3. Venue and personal jurisdiction over Defendant in this District is proper because:
- a. Plaintiff resides in the District;
 - b. Defendants transact business in the District via the telephone lines; and
 - c. Defendants’ activities complained of occurred within the District.

RESPONSE:

AT&T lacks sufficient knowledge to admit or deny the allegations of Paragraphs 3(a) and 3(c). AT&T admits that it transacts business within the Northern District of the State of Illinois and that such business includes the placing of certain telephone calls to customers of Illinois Bell. The remainder of Paragraph 3 contains a legal conclusion to which no response is required.

4. AT&T Services, Inc., used a “Predictive Dialer”, as defined by the Federal Communications Commission, to call the cellular telephone used by Plaintiff and each of the putative class members.

RESPONSE:

Denied.

5. AT&T Services, Inc. is capable of dialing telephone numbers without human intervention, and delivering an automated prerecorded message with text-to-speech customization to insert an account number into the message.

RESPONSE:

AT&T admits that it possesses the capability to dial a series of telephone numbers from a pre-generated list without manually dialing each individual number. AT&T further admits that it possesses the capacity to deliver prerecorded messages with an individual account number inserted into the message. Except as so admitted, AT&T denies the allegations herein.

6. Plaintiff has a cellular telephone assigned [to] the telephone number XXX-XXX-5877 in which he carries on his person and makes and receives calls on. The first seven digits of Plaintiff's cellular telephone number are redacted herein due to privacy considerations.

RESPONSE:

AT&T lacks sufficient knowledge to admit or deny the allegations of Paragraph 6. Except as so admitted, AT&T denies the allegations herein.

7. AT&T Services, Inc., called Plaintiff's cell phone once on September 1, 2015, two times on September 2, 2015, and two times on September 3, 2015.

RESPONSE:

In the absence of the disclosure of the full ten digit number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

8. When plaintiff answered a call on September 3, 2015, from AT&T Services, Inc., on Plaintiff's cellular telephone a prerecorded message in the form as follows was played:

Hi this is AT&T calling with an important message regarding your AT&T account. Para Espanol marque el dos. If this is a person authorized to take action on your account number [pause] 129229770. Please press 1 now. Otherwise to place this call on hold and

allow time for the authorized person to come to the phone press 7. If no one is available right now press 9. [Pause].

I'm sorry I did not receive an entry. If you are authorized to action on your account number [pause] 129229770. Press 1 now. To place this call on hold so the authorized person to come to the phone press 7. If no one is available right now press 9. [Pause].

Please have an authorized billing contact call our business office at 1-800-288-2020 regarding an important matter regarding an important matter with your account number [pause] 129229770.

For more information your account can be viewed at att.com/pay. To hear this again press 3.

Thank you. AT&T appreciates your business.

RESPONSE:

In the absence of the disclosure of the full ten digit telephone number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge.

Except as so admitted, AT&T denies the allegations herein.

9. Each time the account number 129229770 was spoke [sic] in the message above, the voice was a text-to-speech customization that inserted the account number AT&T Services, Inc., was calling in regard to.

RESPONSE:

AT&T Services admits that its equipment can utilize text-to-speech customization that inserts the account number of a customer into a message. In the absence of the disclosure of the full ten digit number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

10. Plaintiff did not give either Defendant permission to call his cell phone number regarding account number 129229770.

RESPONSE:

In the absence of the disclosure of the full ten digit telephone number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

RESPONSE:

11. The calls Plaintiff received were from 1-800-288-2020.

RESPONSE:

In the absence of the disclosure of the full ten digit number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

12. The telephone number 1-800-288-2020 is a telephone number used by AT&T Services, Inc.

RESPONSE:

Admitted that 1-800-288-2020 is a customer service number used in connection with AT&T's U-Verse service offerings. Except as so admitted, AT&T denies the allegations herein.

13. The telephone number 1-800-288-2020 is used in relation to AT&T U-verse.

RESPONSE:

Admitted that 1-800-288-2020 is a customer service number used in connection with AT&T's U-Verse service offerings. Except as so admitted, AT&T denies the allegations herein.

14. AT&T U-verse is a Wireline segment of AT&T Inc.

RESPONSE:

Denied.

15. Plaintiff contacted, on information and belief, AT&T Services, Inc., and Plaintiff believes that that [*sic*] based on this communication that the phone calls to his cell phone was to collect an account that is not his, and therefore, no established business relationship existed for either Defendants to contact him regarding account number 129229770.

RESPONSE:

In the absence of the disclosure of the full ten digit number Plaintiff claims is at issue in this case, AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

16. On information and belief, AT&T Services, Inc., makes an entry in the account notes of each customer if it has been contacted by a person who has indicated that the telephone number they are calling is not the person to whom owes money on the account AT&T Services, Inc., is seeking to collect.

RESPONSE:

Denied.

17. The Telephone Consumer Protection Act, 47 U.S.C. § 227 provides in pertinent part:

- b. Restrictions on use of automated telephone equipment.
 - (1) Prohibitions. 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—
 - (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 paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier

service, or any service for which the called party is charged for the call; . . .

RESPONSE:

AT&T admits that Paragraph 17 accurately sets forth certain statutory language in 47 U.S.C. § 227(b)(1)(A)(iii).

18. Under the TCPA Plaintiff is the “called party”.

RESPONSE:

Paragraph 18 contains a legal conclusion to which no response is required. To the extent a further response is required, AT&T denies the allegations of Paragraph 18.

19. Under the TCPA, Plaintiff is the “person” seeking the private right of action under 47 U.S.C. §227(b)(3).

RESPONSE:

AT&T admits that Plaintiff is the person who has brought this suit. The remainder of Paragraph 19 contains a legal conclusion to which no response is required.

20. Illinois Bell Telephone Company is liable for the actions of AT&T Services, Inc., if the calls to Plaintiff were made on behalf of Illinois Bell Telephone Company, *In re rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 FCC Rcd. 559, ¶ 10.

RESPONSE:

Paragraph 20 contains a legal conclusion to which no response is required. To the extent a further response is required, AT&T admits that the cited document contains an FCC ruling regarding when a party can be liable for calls made on its behalf under the TCPA and states that ruling speaks for itself.

21. On information and belief there are 40 similarly situated called parties whose cellular telephones were called by AT&T Service, Inc., on behalf of Illinois Bell Telephone Company using predictive dialer and/or used prerecorded message.

RESPONSE:

Denied.

22. On information and belief AT&T Services, Inc., placed similar autodialed calls with a prerecorded message on behalf of (a) Southwestern Telephone Company; (b) Pacific Bell Telephone Company; (c) Indiana Bell Telephone Company, Incorporated; (d) Michigan Bell Telephone Company; (e) Nevada Bell Telephone Company; (f) The Ohio Bell Telephone Company; (g) Wisconsin Bell, Inc.; (h) The Southern New England Telephone Company; and (i) BellSouth Telecommunications, Inc.

RESPONSE:

AT&T is unable to admit or deny this Paragraph for lack of knowledge. Except as so admitted, AT&T denies the allegations herein.

23. On information and belief there are 40 similarly situated called parties whose cellular telephones were called by AT&T Service, Inc., using a predictive dialer and/or used a prerecorded message.

RESPONSE:

Denied.

ADDITIONAL DEFENSES

As for its affirmative defenses, and without assuming any burden that it would not otherwise have, AT&T states as follows. AT&T reserves the right to assert additional defenses upon discovery of further information regarding Plaintiffs' claims and upon the development of other relevant information.

FIRST ADDITIONAL DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND ADDITIONAL DEFENSE

All of the claims, in whole or in part, of one or more of the putative class are barred by applicable limitations periods, including contractual limitations periods.

THIRD ADDITIONAL DEFENSE

The damages sought are excessive and in violation of the Due Process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

FOURTH ADDITIONAL DEFENSE

Plaintiff or one more members of the putative class lack standing to maintain the instant causes of action.

FIFTH ADDITIONAL DEFENSE

Without assuming any burden that it would not otherwise have, AT&T asserts that one or more members of the putative class gave prior express consent to receive the telephone calls at issue in this case.

SIXTH ADDITIONAL DEFENSE

All the claims, in whole or in part, of one or more of the putative class are subject to mandatory arbitration.

SEVENTH ADDITIONAL DEFENSE

All of the claims constitute an undue burden on speech and thus violate the First Amendment of the United States Constitution.

EIGHTH ADDITIONAL DEFENSE

All claims for class-wide relief contained in the Complaint are barred because class certification is inappropriate in this matter.

PRAYER FOR RELIEF

WHEREFORE, Defendants pray to the Court as follows:

1. That Plaintiff take nothing by reason of his Complaint;
2. That the Court deny certification of any class;
3. That the Court enter judgment in favor of Defendant; and
4. That the Court award such further relief as the Court deems just and proper.

Dated October 22, 2015

/s/ John E. Muench

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CERTIFICATE OF SERVICE

I, Kyle J. Steinmetz, an attorney, hereby certify that on October 22, 2015, I electronically filed the foregoing DEFENDANTS AT&T SERVICES, INC. AND ILLINOIS BELL TELEPHONE COMPANY'S ANSWER TO PLAINTIFF'S COMPLAINT using the CM/ECF system, which will send notification of the filing to all counsel of record who are registered on the CM/ECF system.

/s/ Kyle J. Steinmetz