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Paul Stemple

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

**PAUL STEMPLER,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

QC HOLDINGS, INC.,

Defendant.

Case No.: 12-CV-1997-BAS-WVG
CLASS ACTION

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

JURY TRIAL DEMANDED

INTRODUCTION

1. PAUL STEMPLER (“Plaintiff”) brings this First Amended Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of QC HOLDINGS, INC. (“Defendant”), in negligently 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

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1 alleges as follows upon personal knowledge as to himself and his own acts
2 and experiences, and, as to all other matters, upon information and belief,
3 including investigation conducted by his attorneys.

4 **JURISDICTION AND VENUE**

- 5 2. This Court has federal question jurisdiction because this case arises out
- 6 of violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
- 7 *LLC*, 132 S. Ct. 740 (2012).
- 8 3. Venue is proper in the United States District Court for the Southern District
- 9 of California pursuant to 18 U.S.C. § 1391(b) because Defendant is subject
- 10 to personal jurisdiction in the County of San Diego, State of California.

11 **PARTIES**

- 12 4. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
- 13 the State of California. Plaintiff is, and at all times mentioned herein was, a
- 14 “person” as defined by 47 U.S.C. § 153 (39).
- 15 5. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
- 16 at all times mentioned herein was, a corporation whose primary corporate
- 17 address is in Overland Park, Kansas. Defendant, is and at all times
- 18 mentioned herein was, a corporation and is a “person,” as defined by 47
- 19 U.S.C. § 153 (39). Defendant provides financial services that include short-
- 20 term loans, check cashing, money orders and money transfers to hundreds of
- 21 thousands of consumers. Plaintiff alleges that at all times relevant herein
- 22 Defendant conducted business in the State of California and in the County of
- 23 San Diego, and within this judicial district.

24 **FACTUAL ALLEGATIONS**

- 25 6. At all times relevant, Plaintiff was a citizen of the State of California.
- 26 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
- 27 47 U.S.C. § 153 (39).
- 28

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- 1 7. Defendant is, and at all times mentioned herein was, a corporation and a
- 2 “person,” as defined by 47 U.S.C. § 153 (39).
- 3 8. At all times relevant Defendant conducted business in the State of California
- 4 and in the County of San Diego, within this judicial district.
- 5 9. At no time did Plaintiff provide Plaintiff’s cellular phone number to
- 6 Defendant through any medium.
- 7 10. At no time did Plaintiff ever enter in a business relationship with Defendant.
- 8 11. Defendant obtained Plaintiff’s contact information through unknown means.
- 9 12. Beginning in May 2012, Defendant began contacting Plaintiff on Plaintiff’s
- 10 cellular telephone attempting to collect an alleged debt alleged to be owed
- 11 by a person other than Plaintiff via an “automatic telephone dialing system,”
- 12 (“ATDS”) as defined by 47 U.S.C. § 227(a)(1) using an “artificial or
- 13 prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A) for debt
- 14 collection purposes.
- 15 13. This ATDS has the capacity to store or produce telephone numbers to be
- 16 called, using a random or sequential number generator.
- 17 14. The telephone number Defendant called was assigned to a cellular telephone
- 18 service for which Plaintiff incurs a charge for incoming calls pursuant to 47
- 19 U.S.C. § 227(b)(1).
- 20 15. These telephone calls constituted calls that were not for emergency purposes
- 21 as defined by 47 U.S.C. § 227(b)(1)(A)(i).
- 22 16. To date, Plaintiff has received approximately twelve calls from Defendant
- 23 where Defendant utilizes an “artificial or prerecorded voice” in conjunction
- 24 with an ATDS.
- 25 17. These telephone calls constituted calls that were not for emergency purposes
- 26 as defined by 47 U.S.C. § 227 (b)(1)(A)(i).
- 27 18. Plaintiff did not provide Defendant or its agent prior express consent to
- 28 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

1 19. These telephone calls by Defendant, or its agent, violated 47 U.S.C. §
2 227(b)(1).

3 **CLASS ACTION ALLEGATIONS**

4 20. Plaintiff brings this nationwide class action on behalf of himself and on
5 behalf of and all others similarly situated (the “Class”), consisting of:

6 All persons or entities within the United States whose 10-
7 digit cellular telephone numbers were listed by an
8 account holder in the Employment and/or Contacts fields,
9 but were not listed in the Personal fields, of a customer
10 loan application produced to Defendant, and who were
11 called by Defendant using an ATDS and/or an artificial
12 or prerecorded voice for the purpose of collecting or
13 attempting to collect an alleged debt from the account
14 holder, between August 13, 2008 and August 13, 2012.

15 21. Defendant and its employees or agents are excluded from the Class.
16 Plaintiff does not know the number of members in the Class, but believes the
17 Class members number in the tens of thousands. Thus, this matter should be
18 certified as a Class action to assist in the expeditious litigation of this matter.

19 22. Plaintiff and members of the Class were harmed by the acts of Defendant in
20 at least the following ways: Defendant, either directly or through its agents,
21 illegally contacted Plaintiff and the Class members via their cellular
22 telephones by using marketing and artificial or prerecorded voice messages,
23 thereby causing Plaintiff and the Class members to incur certain cellular
24 telephone charges or reduce cellular telephone time for which Plaintiff and
25 the Class members previously paid, and invading the privacy of said
26 Plaintiff and the Class members. Plaintiff and the Class members were
27 damaged thereby.

28 23. This suit seeks only damages and injunctive relief for recovery of economic
injury on behalf of the Class, and it expressly is not intended to request any

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1 recovery for personal injury and claims related thereto. Plaintiff reserves the
2 right to expand the Class definition to seek recovery on behalf of additional
3 persons as warranted as facts are learned in further investigation and
4 discovery.

5 24. The joinder of the Class members is impractical and the disposition of their
6 claims in the Class action will provide substantial benefits both to the parties
7 and to the court. The Class can be identified through Defendant's records or
8 Defendant's agents' records.

9 25. There is a well-defined community of interest in the questions of law and
10 fact involved affecting the parties to be represented. The questions of law
11 and fact to the Class predominate over questions which may affect
12 individual Class members, including the following:

- 13 a) Whether, within the four years prior to the filing of the Complaint,
14 Defendant or its agents sent any marketing and artificial or
15 prerecorded voice messages to the Class (other than a message made
16 for emergency purposes or made with the prior express consent of the
17 called party) using any automatic dialing and/or SMS texting system
18 to any telephone number assigned to a cellular phone service;
- 19 b) Whether Plaintiff and the Class members were damaged thereby, and
20 the extent of damages for such violation; and
- 21 c) Whether Defendant and its agents should be enjoined from engaging
22 in such conduct in the future.

23 26. As a person that received at least one artificial or prerecorded voice message
24 without Plaintiff's prior express consent, Plaintiff is asserting claims that are
25 typical of the Class. Plaintiff will fairly and adequately represent and protect
26 the interests of the Class in that Plaintiff has no interests antagonistic to any
27 member of the Class.
28

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

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

23 **47 U.S.C. § 227 ET SEQ.**

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

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

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

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

6 **SECOND CAUSE OF ACTION**
7 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
8 **TELEPHONE CONSUMER PROTECTION ACT**
9 **47 U.S.C. § 227 ET SEQ.**

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

12 36. The foregoing acts and omissions of Defendant constitute numerous and
13 multiple knowing and/or willful violations of the TCPA, including but not
14 limited to each and every one of the above-cited provisions of 47 U.S.C. §
15 227 et seq.

16 37. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. §
17 227 et seq., Plaintiff and The Class are entitled to an award of \$1,500.00 in
18 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
19 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

22 **PRAYER FOR RELIEF**

23 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and the Class
24 members the following relief against Defendant:

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

- 27 • As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
28 Plaintiff seeks for himself and each Class member \$500.00 in statutory

1 damages, for each and every violation, pursuant to 47 U.S.C. §
2 227(b)(3)(B).

- 3 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
- 4 conduct in the future.
- 5 • Any other relief the Court may deem just and proper.

6 **SECOND CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
7 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 8 • As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
- 9 Plaintiff seeks for himself and each Class member \$500.00 in statutory
- 10 damages, for each and every violation, pursuant to 47 U.S.C. §
- 11 227(b)(3)(B).
- 12 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
- 13 conduct in the future.
- 14 • Any other relief the Court may deem just and proper.

15 **TRIAL BY JURY**

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

18
19 Dated: December 18, 2015

Respectfully submitted,

20 **KAZEROUNI LAW GROUP, APC**

21
22 By: /s/ Abbas Kazerounian
23 **ABBAS KAZEROUNIAN, ESQ.**
24 **ATTORNEY FOR PLAINTIFF**

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