

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

COLIN LATEANO, individually and on
behalf of others similarly situated,

Plaintiff,

v.

CHICAGO CUBS BASEBALL CLUB,
LLC,

Defendant.

Case No. 1:23-cv-02757

Honorable Joan B. Gottschall

**DEFENDANT CHICAGO CUBS BASEBALL CLUB, LLC'S ANSWER
TO PLAINTIFF COLIN LATEANO'S CLASS ACTION COMPLAINT**

Defendant Chicago Cubs Baseball Club, LLC (hereinafter "Chicago Cubs Baseball" or "Defendant") hereby answers the Class Action Complaint ("Complaint") filed by Plaintiff Colin Lateano (hereinafter "Lateano" or "Plaintiff"). Chicago Cubs Baseball denies all allegations set forth in the Complaint except to the extent such allegations are specifically admitted below.

NATURE OF ACTION

1. This case concerns automated telemarketing text messages the Chicago Cubs sent to Mr. Lateano promoting the sale of its baseball tickets in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (hereinafter referred to as the "TCPA").

ANSWER: Defendant denies the allegations contained in paragraph 1.

2. The Chicago Cubs' automated equipment sent these messages even after Plaintiff requested it to stop sending further messages.

ANSWER: Defendant denies the allegations contained in paragraph 2.

3. Because telemarketing campaigns run by automated equipment are generally programmed to send messages to thousands of potential customers en masse, Plaintiff brings this

action on behalf of a proposed class of persons who also received Defendant's messages after making a stop request.

ANSWER: Defendant denies the allegations contained in paragraph 3.

4. A class action is the best means of obtaining redress for the Defendant's illegal telemarketing and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

ANSWER: The allegations contained in paragraph 4 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 4.

JURISDICTION AND VENUE

5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227 *et seq.*

ANSWER: The allegations contained in paragraph 5 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant admits that this Court has subject matter jurisdiction.

6. Venue is proper pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claim occurred in this district.

ANSWER: The allegations contained in paragraph 6 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant admits that venue is proper.

PARTIES

7. Plaintiff Colin Lateano is a resident of Chicago, Illinois.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7.

8. Plaintiff is, and at all times mentioned herein, a "person" as defined by 47 U.S.C. § 153(39).

ANSWER: The allegations contained in paragraph 8 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant is without

knowledge or information sufficient to form a belief as to the allegations contained in paragraph 8.

9. Chicago Cubs Baseball Club, LLC is a Delaware limited liability company with its principal place of business in Chicago, IL.

ANSWER: Defendant admits the allegations contained in paragraph 9.

LEGISLATIVE AND REGULATORY BACKGROUND

10. The TCPA instructs the Federal Communications Commission to implement regulations “concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” 47 U.S.C. § 227(c).

ANSWER: The allegations contained in paragraph 10 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant responds that 47 U.S.C. § 227(c)(1) states, in part, that “[w]ithin 120 days after December 20, 1991, the Commission shall initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object”

11. Pursuant to that instruction, the FCC has implemented the following rule: “Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request.” 47 C.F.R. § 64.1200(d)(3).

ANSWER: The allegations contained in paragraph 11 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant responds that 47 C.F.R. § 64.1200(d)(3) includes the language quoted above.

12. The TCPA provides a private cause of action to persons who receive calls in violation of this regulation. 47 U.S.C. § 227(c)(5).

ANSWER: The allegations contained in paragraph 12 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 12.

FACTUAL ALLEGATIONS

13. At all times relevant hereto, Mr. Lateano subscribed to the telephone number (773) 368-XXXX (“Plaintiff’s Number”) and used this number for personal and residential purposes.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13.

14. Prior to July 21, 2022, the Chicago Cubs sent several text messages to Plaintiff’s Number promoting the sale of baseball tickets.

ANSWER: Defendant admits that, prior to July 21, 2022, SMS text messages were transmitted to the mobile telephone number (773) 368-XXXX from the SMS short code 88019, which is a short code used by Defendant to transmit SMS text messages to subscribed mobile numbers. Defendant denies the remainder of the allegations contained in paragraph 14.

15. On July 21, 2022, Plaintiff responded to one of these messages with a message saying “Stop.”

ANSWER: Defendant admits that on July 21, 2022, the SMS short code 88019, which is a short code used by Defendant to transmit SMS text messages to subscribed mobile numbers, received an SMS text message reading “STOP” from the mobile telephone number (773) 368-XXXX. Defendant denies the remainder of the allegations contained in paragraph 15.

16. Despite that instruction, Defendant sent numerous text messages to Plaintiff’s Number thereafter promoting the sale of baseball tickets, including the following:

“You’ve got first dibs on Cubs Tickets! Secure your ticket pack today: <http://bit.ly/3HTsjwq> Text STOP to cancel.” Sent on Feb 2, 2023.

“It’s game time! Cubs single game tickets on sale now. Secure tickets for the best matchups, giveaways & more! <https://atmlb.com/3lMz2al> Text STOP to cancel.” Sent on February 24, 2023.

Welcome to the Chicago Cubs SMS alerts! Don’t miss Opening Day on 3/30 vs. Brewers. Grab your tickets today! <https://gr.order.cubs.com/6Gscbd>.” Sent on March 24, 2023.

ANSWER: Defendant admits that, after July 21, 2022, SMS text messages were transmitted to the mobile telephone number (773) 368-XXXX from the SMS short code 88019, which is a short code used by Defendant to transmit SMS text messages to

subscribed mobile numbers. Defendant further admits that it sent text messages that included the language quoted above. Defendant denies the remainder of the allegations contained in paragraph 16.

17. The Chicago Cubs failed to institute the procedures necessary to honor do-not-call requests and did fail to honor Plaintiff's do-not-call request.

ANSWER: Defendant denies the allegations contained in paragraph 17.

18. Defendant's actions harmed Plaintiff by intruding upon his seclusion, interfering with the legitimate use of his phone, wasting his time, and invading his privacy.

ANSWER: Defendant denies the allegations contained in paragraph 18.

CLASS ACTION ALLEGATIONS

19. Plaintiff incorporates by reference all other paragraphs of this Complaint as if fully stated herein.

ANSWER: Paragraph 19 contains no allegations of fact and, therefore, no response is required.

20. Mr. Lateano brings this action individually and on behalf of all other persons similarly situated (hereinafter referred to as "the Class") pursuant to Federal Rule of Civil Procedure 23(b)(3).

ANSWER: Paragraph 20 contains no allegations of fact and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 20.

21. Plaintiff proposes the following Class definition, subject to amendment as appropriate:

All persons in the United States (1) subscribing to a residential telephone number (2) to which Defendant sent at least two text messages within a 12 month period (3) promoting its goods for sale (4) at least 30 days after receipt of a "stop" reply (5) within four years of the date of the Complaint.

ANSWER: Paragraph 21 contains no allegations of fact and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 21.

22. Excluded from the Class is Defendant and any entities in which Defendant has a controlling interest, Defendant's agents and employees, any Judge to whom this action is assigned, and any member of such Judge's staff and immediate family.

ANSWER: Paragraph 22 contains no allegations of fact and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 22.

23. The Class defined above are identifiable through phone records and Defendant's internal records.

ANSWER: Defendant denies the allegations contained in paragraph 23.

24. Given the generic nature of the telemarketing campaign, and the use of programmed, automated telemarketing equipment, the Class numbers at least in the thousands. Individual joinder of these persons is impracticable.

ANSWER: The allegations contained in paragraph 24 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 24.

25. Mr. Lateano is a member of the Class.

ANSWER: The allegations contained in paragraph 25 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 25.

26. There are questions of law and fact common to Plaintiff and the Class, including but not limited to the following:

Whether the calls qualify as "telemarketing"
Whether the actions of the Defendant were knowing or willful.

ANSWER: The allegations contained in paragraph 26 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 26.

27. Plaintiff's claims are typical of the claims of the Class. Plaintiff's claims, like the claims of the Class arise out of the same common course of conduct by Defendant and are based on the same legal and remedial theories.

ANSWER: The allegations contained in paragraph 27 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 27.

28. Mr. Lateano is an adequate representative of the Class because his interests do not conflict with the interests of the Class, he will fairly and adequately protect the interests of the Class, and he is represented by counsel skilled and experienced in class actions, including TCPA class actions.

ANSWER: The allegations contained in paragraph 28 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 28.

29. Common questions of law and fact predominate over questions affecting only individual class members.

ANSWER: The allegations contained in paragraph 29 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 29.

30. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the calls at issue were all automated and made as part of the same telemarketing campaign.

ANSWER: The allegations contained in paragraph 30 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 30.

31. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication,

provides a forum for small claimants, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action.

ANSWER: The allegations contained in paragraph 31 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 31.

32. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case.

ANSWER: The allegations contained in paragraph 32 are legal conclusions and, therefore, no response is required. To the extent a response is required, Defendant denies the allegations contained in paragraph 32.

CAUSE OF ACTION

Count One - Telemarketing Calls Made After a Do-Not-Call Request

33. Plaintiff incorporates by reference the foregoing paragraphs of this Complaint as if fully set forth herein.

ANSWER: Paragraph 33 contains no allegations of fact and, therefore, no response is required.

34. Defendant violated 47 U.S.C. § 227(c) and the FCC's regulation at 47 C.F.R. § 64.1200(d)(3) by failing to institute procedures necessary to honor do-not-call requests and by placing telemarketing calls to Plaintiff and the class's residential phone numbers after receipt of a do-not-call request.

ANSWER: Defendant denies the allegations contained in paragraph 34.

35. As a result of the Chicago Cubs' violations, Plaintiff and the Class are entitled to an award of \$500 in statutory damages for each and every violation of the statute, or up to \$1,500 in statutory damages for each willfully or knowingly made violation, pursuant to 47 U.S.C. § 227(b)(3).

ANSWER: Defendant denies the allegations contained in paragraph 35.

RESPONSE TO PLAINTIFF’S PRAYER FOR RELIEF

To the extent that a response to Plaintiff’s Prayer for Relief is required, Defendant denies that Plaintiff is entitled to any form of relief whatsoever, whether in the form requested in the Class Action Complaint or otherwise.

AFFIRMATIVE DEFENSES

Discovery and investigation may reveal that any one or more of the following affirmative defenses are available to Defendant in this matter. Defendant, therefore, asserts said affirmative defenses in order to preserve them. Upon completion of discovery, and if the facts warrant, MLB may withdraw any of these affirmative defenses as may be appropriate. Further, Defendant reserves the right to amend its Answer to assert additional defenses, cross-claims, counterclaims, and other claims and defenses.

FIRST DEFENSE

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

SECOND DEFENSE

2. At all times relevant to the Complaint, Defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations in violation of the regulations prescribed under 47 U.S.C. § 227(c).

THIRD DEFENSE

3. At all times relevant to the Complaint, Defendant has instituted and maintained procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of Defendant. Defendant’s procedures meet the minimum standards set forth in 47 C.F.R. § 64.1200(d)(1)–(7).

FOURTH DEFENSE

4. Plaintiff's claims are not appropriate for certification as a class action under Federal Rule of Civil Procedure 23.

FIFTH DEFENSE

5. Plaintiff's and the putative class's claims are barred, in whole or in part, because the alleged injuries were caused by Plaintiff/putative class members, by events outside the control of any of the parties, and/or by a superseding or intervening cause.

SIXTH DEFENSE

6. Plaintiff lacks statutory and/or Article III standing to bring this action and to represent any purported class because he did not suffer an injury-in-fact as a result of Defendant's alleged conduct.

SEVENTH DEFENSE

7. Plaintiff's and the putative class's claims are barred by the relevant statute of limitations.

EIGHTH DEFENSE

8. Plaintiff's and the putative class's claims are barred under the doctrine of laches and/or unclean hands.

NINTH DEFENSE

9. Plaintiff's and the putative class's claims are barred because they failed to mitigate their alleged damages.

TENTH DEFENSE

10. Certain of Plaintiff's and the putative class's claims may be subject to binding arbitration pursuant to the arbitration provision set forth in the Terms of Use Agreement for mlb.com.

ELEVENTH DEFENSE

11. Any individual or aggregated damages award in this case must not be so severe and oppressive as to be wholly disproportionate to the offense and/or obviously unreasonable.

TWELFTH DEFENSE

12. Plaintiff's and the putative class's claims fail or are otherwise barred, in whole or in part, because text messages were sent to Plaintiff/putative class members with their express prior consent or the consent of someone acting on their behalf.

THIRTEENTH DEFENSE

13. Plaintiff's and the putative class's claims fail because Defendant did not send text messages using an automated telephone dialing system.

FOURTEENTH DEFENSE

14. Plaintiff/putative class members cannot recover more than \$500 per alleged violation of 47 U.S.C. § 227(c) because Defendant did not willfully or knowingly violate 47 U.S.C. § 227(c) or the regulations promulgated thereunder.

FIFTEENTH DEFENSE

15. Plaintiff's and the putative class's claims fail because they have suffered no actual damages, economic loss, or compensable injury of any kind.

RESERVATION OF ALL AFFIRMATIVE DEFENSES

Defendant hereby gives notice that it reserves the right to supplement, amend, or modify its Answer to rely upon any other matter constituting an avoidance or affirmative defense, including but not limited to estoppel, waiver, unclean hands, and other equitable defenses, as set forth in Rule 8(c) of the Federal Rules of Civil Procedure, as may be permitted by the Court or the Federal Rules of Civil Procedure, as its investigation continues, and as discovery may require.

DEFENDANT’S PRAYER FOR RELIEF

WHEREFORE, Defendant prays for relief and judgment, as follows:

- A. That the Complaint be dismissed with prejudice;
- B. That Plaintiff take nothing by reason of the Complaint;
- C. That judgment be rendered in favor of Chicago Cubs Baseball and against Plaintiff

with Respect to all Counts in the Complaint;

D. That Chicago Cubs Baseball be awarded its cost of suit and reasonable attorneys’ fees incurred in defense of this action to the fullest extent allowed by law; and

E. For such other and further relief as the Court may deem just and proper.

JURY DEMAND

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendant hereby demands a trial by jury of all issues so triable. Defendant denies that all issues raised by the Class Action Complaint are triable by jury.

Dated: June 23, 2023

Respectfully submitted,

By: /s/ Alan E. Littmann
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