



MAY 2, 2014

COMMUNICATIONS QUICK FACTS

Nearly 20 attorneys experienced in communications issues including:

- former FCC attorneys
- former state public utilities attorneys

Two attorneys recognized as “among the top 25 privacy experts” *Computerworld*

Authors of the Communications and Cyber Security chapter of LexisNexis®’ *The Homeland Security Deskbook: Private Sector Impacts of the Defense Against Terrorism*

HONORS AND AWARDS

Ranked in 2011 *U.S. News-Best Lawyers “Best Law Firms”*

A SmartCEO Magazine Legal Elite

VENABLE SNAPSHOT

More than 600 lawyers in nine offices

American Lawyer’s AmLaw 100

94 practice groups ranked, “Best Law Firms” *U.S. News & World Report-Best Lawyers 2012-2013*

76 attorneys and 29 practice areas ranked, *Chambers USA 2013*

Counsel to 38 of the Fortune 100

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[Communications Practice](#)

NOTABLE DECISIONS

MENDEZ V. C-TWO GROUP, INC., NO. C-13-5914 EMC (N.D. CAL. FILED APR. 21, 2014)

In *Mendez*, the plaintiff brought a class action complaint against C-Two Group, Inc. and mobileStorm Inc., alleging that the defendants sent unsolicited text message advertisements to their phones using an automatic telephone dialing system (“ATDS”). mobileStorm offers a software program that connects clients and telecommunications carriers, but it does not control the content or the timing of the messages. The court granted the defendants’ motion to dismiss for failure to state a claim. The court stated that the parties agreed that in order for mobileStorm to be liable, it would need to be the originator or controller of the content of the text message, have “a high degree of involvement in, or have actual notice of the unlawful activity” and “fail to take steps to prevent the text transmissions.” The case was dismissed, but the court stated the plaintiff was not barred from re-filing if the plaintiff could find facts supporting the claim.

IN RE CARGO AIRLINE ASSOCIATION, DECLARATORY RULING, CG DOCKET NO. 02-278 (MARCH 27, 2014)

The FCC responded to an August 17, 2012 petition filed by the Cargo Airlines Association (“CAA”) that sought clarification on the application of the TCPA to autodialed or prerecorded package delivery notification calls made to consumers’ wireless numbers. The package delivery companies that are members of the CAA deliver a huge volume of packages and rarely have any contact with a recipient until a package is shipped. As a result, they argued it would be impossible to manually dial every delivery notification to wireless cell phone numbers or to obtain prior express consent. The FCC granted the CAA’s “request to exempt its proposed free-to-end-user notifications to consumers’ wireless phones, subject to certain conditions.” The FCC adopted seven conditions for these calls, explained in detail in the Order ([link above](#)). The FCC noted that the CAA’s proposed conditions complied with the requirement that the called party not be charged for the calls.

IN RE GROUPME INC., DECLARATORY RULING, CG DOCKET NO. 02-278, (MARCH 27, 2014)

The FCC issued a declaratory ruling in response to a March 1, 2012 petition filed by GroupMe that sought clarification on the application of the TCPA to group texting services. GroupMe provides free group text messaging service for groups of up to 50 members. Under its service, the group creator provides GroupMe with the cell phone numbers of the group members and then GroupMe sends up to four text messages to each group member, providing basic information related to the group and its creator. The company requested the FCC clarify that consent for certain calls may be given through intermediaries.

The FCC granted the request, stating that a “consumer’s prior express consent may be obtained through and conveyed by an intermediary, such as the organizer of a group using GroupMe’s service,” subject to certain caveats. The FCC noted the TCPA is silent on how consumer consent should be obtained and stated it was exercising its discretion “to interpret the requirement by looking to the consumer protection policies and goals underlying the TCPA,” concluding that Congress did not expect the TCPA to block normal and desired business communications. The FCC emphasized that the clarification “in no way mitigates [the] duty, except in emergencies, to obtain the prior express consent of the called party before placing an autodialed or prerecorded calls to that party’s wireless telephone number.”

Further, the FCC stated that the group organizers must obtain the prior consent of each member of the group. To the extent consent was not actually obtained by the intermediary, *the caller remains liable*. Thus, although the FCC granted the exception, relying on intermediaries can still be a risky proposition for a business sending text messages. Finally, note that the FCC issued this ruling in regards to non-telemarketing or “informational texts” and it does not apply to marketing texts subject to the “prior express written consent” requirement.

RECENT COMPLAINTS

PLAINTIFFS: JOHN WILTERDING, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: NATIONWIDE CREDIT LLC

COURT NAME: USDC Eastern District of California - Fresno Division, California

CASE NUMBER: 1:14cv478

FILING DATE: 4/3/2014

PLAINTIFFS: DR. ROBERT L. MEINDERS DC LTD., INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS OF SIMILARLY-SITUATED PERSONS

DEFENDANTS: THE EMERY WILSON CORPORATION DBA STERLING MANAGEMENT SYSTEMS; JOHN DOES

COURT NAME: St. Clair County Circuit Court, Illinois

CASE NUMBER: 14L-0256

FILING DATE: 4/3/2014

PLAINTIFFS: FREDERICK LUSTER

DEFENDANTS: GREEN TREE SERVICING LLC

COURT NAME: DeKalb County State Court, Georgia

CASE NUMBER: 14a50920

FILING DATE: 4/4/2014

PLAINTIFFS: PEDRO FRANQUI

DEFENDANTS: STELLAR RECOVERY COLLECTION AGENCY INC.

COURT NAME: USDC Middle District of Florida - Tampa Bay, Florida

CASE NUMBER: 8:14cv803

FILING DATE: 4/4/2014

PLAINTIFFS: VARNELL CASTOR

DEFENDANTS: NATIONAL GRID USA SERVICE COMPANY INC.; DOES 1-10, INCLUSIVE

COURT NAME: USDC Massachusetts, Massachusetts

CASE NUMBER: 1:14cv11682

FILING DATE: 4/7/2014

PLAINTIFFS: JOHN FONTES

DEFENDANTS: NATIONAL ATTORNEY COLLECTION SERVICES INC.; NATIONAL ATTORNEY SERVICES LLC

COURT NAME: USDC Central District of California, California

CASE NUMBER: 2:14cv2605

FILING DATE: 4/7/2014

PLAINTIFFS: CHRISTINA MELITO
DEFENDANTS: AMERICAN EAGLE OUTFITTERS INC.; AEO MANAGEMENT CO.
COURT NAME: USDC Southern District of New York, New York
CASE NUMBER: 1:14CV2440
FILING DATE: 4/8/2014
SUMMARY: Defendants allegedly sent numerous unwanted and unsolicited "Spam" SMS text message to the class' cell phones.

PLAINTIFFS: NANCY MATHIAS
DEFENDANTS: DIRECT ENERGY DBA FIRST CHOICE POWER
COURT NAME: USDC Colorado, Colorado
CASE NUMBER: 1:14cv999
FILING DATE: 4/8/2014
SUMMARY: Plaintiff alleged that the defendant placed unauthorized automated calls to the plaintiff's cell phone.

PLAINTIFFS: TOBI BEESLEY
DEFENDANTS: SALLIE MAE INC.; DOES
COURT NAME: Imperial County Superior Court, California
CASE NUMBER: 5:14-cv-00689
FILING DATE: 4/8/2014

PLAINTIFFS: ALEXIOS KAFATOS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED
DEFENDANTS: RESEARCH TRIANGLE INSTITUTE
COURT NAME: USDC Central District of California, California
CASE NUMBER: 8:14cv540
FILING DATE: 4/7/2014

PLAINTIFFS: KENNETH BARBAGLI JR.
DEFENDANTS: NCB MANAGEMENT SERVICES INC.
COURT NAME: USDC Eastern District of Pennsylvania, Pennsylvania
CASE NUMBER: 2:14cv2082
FILING DATE: 4/9/2014
SUMMARY: Plaintiff alleged that defendant called the plaintiff's cell phone using an ATDS even though the plaintiff does not and has never owed a debt to the defendant.

PLAINTIFFS: COQUERAN LUCILLE
DEFENDANTS: COMENITY BANK
COURT NAME: USDC Eastern District of New York, New York
CASE NUMBER: 1:14cv2327
FILING DATE: 4/10/2014

PLAINTIFFS: ERNEST ENGELS
DEFENDANTS: PORTFOLIO RECOVERY ASSOCIATES LLC

COURT NAME: USDC Northern District of Ohio, Ohio

CASE NUMBER: 3:14cv790

FILING DATE: 4/11/2014

PLAINTIFFS: JONATHAN PAUL CATLIN

DEFENDANTS: CHERRY CREEK STRATEGIC ADVISORS LLC

COURT NAME: USDC Western District of New York, New York

CASE NUMBER: 6:14cv6163

FILING DATE: 4/7/2014

SUMMARY: Defendant allegedly made almost daily calls to the plaintiff's cell phone over two months, using an automatic dialing system and leaving prerecorded messages.

PLAINTIFFS: TIMOTHY VARVEL

DEFENDANTS: THE NORRYCH GROUP INC. DBA ARBITRATION RESOLUTION SERVICES INC.; DOES

COURT NAME: USDC Eastern District of Pennsylvania, Pennsylvania

CASE NUMBER: 2:14cv2130

FILING DATE: 4/11/2014

SUMMARY: Plaintiff alleged that the defendant made repeated debt collection calls to the plaintiff's cell phone using an autodialer.

PLAINTIFFS: LA TOIJA SNODGRASS DBA LA TOIJA BLACK

DEFENDANTS: SALLIE MAE INC.

COURT NAME: USDC Southern District of Indiana, Indiana

CASE NUMBER: 1:14cv560

FILING DATE: 4/11/2014

SUMMARY: Plaintiff alleged that the defendant used an autodialer to make repeated calls to plaintiff's cell phone to collect student loan debts. The plaintiff requested the calls stop but the defendant continued making calls to the cell phone.

PLAINTIFFS: CANDICE LACKMAN

DEFENDANTS: SALLIE MAE INC.

COURT NAME: USDC Southern District of Indiana, Indiana

CASE NUMBER: 4:14cv9

FILING DATE: 4/14/2014

PLAINTIFFS: VIKING REALTY, A CORPORATION, INDIVIDUALLY AND ON BEHALF OF ALL OTHER SIMILARLY SITUATED

DEFENDANTS: MERCHANT ACCESS GROUP, LLC; DOES

COURT NAME: USDC Central District of California, California

CASE NUMBER: 2:14cv2840

FILING DATE: 4/14/2014

SUMMARY: Plaintiff alleged the defendant sent unsolicited fax advertisements without prior express consent.

PLAINTIFFS: SPINE-ETICS CHIROPRACTIC WELLNESS SERVICE, P.C. INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: NATIONAL FUNDING INC.

COURT NAME: USDC Eastern District of New York, New York
CASE NUMBER: 2:14cv2349
FILING DATE: 4/11/2014

PLAINTIFFS: JESUS MULET

DEFENDANTS: UNIVERSITY OF PHOENIX INCORPORATED; UNKNOWN PARTIES, NAMED AS: DOES 1-10 (INCLUSIVE)

COURT NAME: USDC Arizona - Phoenix, Arizona
CASE NUMBER: 2:14cv814
FILING DATE: 4/17/2014

PLAINTIFFS: SANDRA COLON

DEFENDANTS: NATIONSTAR MORTGAGE LLC; FEDERAL NATIONAL MORTGAGE ASSOCIATION; SHAPIRO, FISHMAN & GACHE; RACHEL HYMAN; CITIMORTGAGE INC.

COURT NAME: USDC Southern District of Florida, Florida
CASE NUMBER: 1:14cv21297
FILING DATE: 4/11/2014

PLAINTIFFS: HOLLY LIVELY, OBO HERSELF AND ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: CARIBBEAN CRUISE LINES, INC., A FLORIDA CORPORATION; DOES

COURT NAME: USDC Eastern District of California - Sacramento Division, California
CASE NUMBER: 2:14at460
FILING DATE: 4/17/2014

PLAINTIFFS: SHAWN SULLIVAN

DEFENDANTS: JUST ENERGY GROUP INC. DBA COMMERCE ENERGY; DOES

COURT NAME: USDC Northern District of Georgia, Georgia

CASE NUMBER: 3:14cv55

FILING DATE: 4/17/2014

SUMMARY: Plaintiffs alleged defendant continued to place pre-recorded automatic telephone calls to plaintiff's cell phone after being told to stop.

PLAINTIFFS: SEYED M. KAZEROUNI, INDIVIDUALLY AND ON BEHALF OF ALL SIMILARLY SITUATED

DEFENDANTS: COSMOPOLITAN HOTELS & RESORTS INC.

COURT NAME: USDC Central District of California, California

CASE NUMBER: 8:14cv616

FILING DATE: 4/18/2014

PLAINTIFFS: DAVID VACCARO

DEFENDANTS: CROWN HOME CENTER INC.

COURT NAME: USDC Central District of California, California

CASE NUMBER: 2:14cv3018

FILING DATE: 4/18/2014

PLAINTIFFS: PHYSICIANS HEALTHSOURCE, INC., AN OHIO CORPORATION, INDIVIDUALLY AND AS REPRESENTATIVE OF A CLASS OF SIMILARLY SITUATED PERSONS

DEFENDANTS: ENDO PHARMACEUTICALS, INC.; ENDO PHARMACEUTICALS SOLUTIONS INC.; ENDO PHARMACEUTICALS VALERA INC.; ENDO HEALTH SOLUTIONS INC.; ENDO PHARMA LLC; ENDOPHARMA, INC.; ENDO PHARMA DELAWARE INC.; JOHN DOES 1-10

COURT NAME: USDC Eastern District of Pennsylvania, Pennsylvania

CASE NUMBER: 2:14cv2289

FILING DATE: 4/21/2014

PLAINTIFFS: WILLIAM R. CARLISLE; SHANNON O. CARLISLE

DEFENDANTS: FITNESS INTERNATIONAL LLC

COURT NAME: Gwinnett County State Court, Georgia

CASE NUMBER: 14c1966

FILING DATE: 4/17/2014

PLAINTIFFS: CANDIDA WOLCOTT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: NISSAN MOTOR ACCEPTANCE CORPORATION

COURT NAME: USDC Central District of California, California

CASE NUMBER: 5:14cv780

FILING DATE: 4/21/2014

PLAINTIFFS: FAMILY HEALTH CHIROPRACTIC INC., INDIVIDUALLY AND AS THE REPRESENTATIVE OF A CLASS OF SIMILARLY-SITUATED PERSONS

DEFENDANTS: BIOMEDX MARKETING LLC; SEMINAR BUILDERS INC.; BRAD MITCHELL ENTERPRISES; JASON MONSIGNORE ENTERPRISES INC.; BIOVEDA HEALTH AND WELLNESS CENTERS LLC; THE BIOVEDA FOUNDATION INC.; PRACTICE MEDX LLC DBA BIOVEDA TECHNOLOGIES; DOES

COURT NAME: USDC Northern District of Ohio, Ohio

CASE NUMBER: 4:14cv873

FILING DATE: 4/23/2014

PLAINTIFFS: DRUG REFORM COORDINATION NETWORK, INC., INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: GREY HOUSE PUBLISHING, INC.

COURT NAME: USDC District of Columbia, District of Columbia

CASE NUMBER: 1:14cv701

FILING DATE: 4/23/2014

SUMMARY: Plaintiff alleged that defendant sent facsimile advertisements which did not contain statutorily required language stating that the sender's failure to comply, within 30 days, with a request not to send future advertisements to the recipient's telephone facsimile machine(s) is unlawful.

PLAINTIFFS: CRAIG CUNNINGHAM

DEFENDANTS: CARIBBEAN CRUISE LINE; JOHN/JANE DOES 1-10

COURT NAME: USDC Middle District of Tennessee, Tennessee

CASE NUMBER: 3:14cv1040

FILING DATE: 4/22/2014

SUMMARY: Plaintiff alleged that the defendant called plaintiff's cell phone multiple times "using an automated telephone dialing system or pre-recorded message."

PLAINTIFFS: BRIAN EDWARDS

DEFENDANTS: EQUITABLE ACCEPTANCE CORP.

COURT NAME: USDC Northern District of Ohio, Ohio

CASE NUMBER: 1:14cv888

FILING DATE: 4/24/2014

SUMMARY: Plaintiff alleged that the defendant placed calls to plaintiff's cell phone using an ATDS in an attempt to collect a debt. The plaintiff requested the defendant cease making calls, but the calls continued.

PLAINTIFFS: VLADIMIR LEMESHKO

DEFENDANTS: ALLIANCE HEALTH NETWORKS INC.

COURT NAME: USDC Eastern District of Michigan, Michigan

CASE NUMBER: 2:14cv11635

FILING DATE: 4/24/2014

PLAINTIFFS: DEVITO ORTHODONTICS PA, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: I CARE CREDIT LLC, A GEORGIA LLC DBA ICARE FINANCIAL

COURT NAME: USDC Middle District of Florida - Tampa Bay, Florida

CASE NUMBER: 8:14cv963

FILING DATE: 4/23/2014

PLAINTIFFS: PHILIP J CHARVAT

DEFENDANTS: AUGEO AFFINITY MARKETING INC.

COURT NAME: USDC Southern District of Ohio - Columbus, Ohio

CASE NUMBER: 2:14cv376

FILING DATE: 4/25/2014

SUMMARY: The plaintiff alleged that the defendant sent "multiple prerecorded telemarketing calls" to the plaintiff, even though his number was registered with the National Do Not Call Registry.

PLAINTIFFS: MAX MARGULIS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED

DEFENDANTS: SURREY VACATION RESORTS INC. DBA GRAND CROWNE RESORTS

COURT NAME: St. Louis County Circuit Court, Missouri

CASE NUMBER: 14SL-CC01367

FILING DATE: 4/18/2014

PLAINTIFFS: HOLT HEALTHCARE MANAGEMENT SERVICES, INC., AS A CLASS

DEFENDANTS: SOUTHWEST IMAGING, INC.

COURT NAME: USDC Northern District of Illinois, Illinois

CASE NUMBER: 1:14cv3023

FILING DATE: 4/28/2014

PLAINTIFFS: ROD KEGLEY

DEFENDANTS: WELLS FARGO BANK NA, AS TRUSTEE FOR THE REGISTERED HOLDERS OF CREDIT
SUISSE FIRST BOSTON MORTGAGE SECURITIES CORP., COMMERCIAL MORTGAGE
PASS-THROUGH CERTIFICATES, SERIES 2007-C5

COURT NAME: USDC Idaho, Idaho

CASE NUMBER: 1:14cv162

FILING DATE: 4/25/2014