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YOU MAY NOT WIN A FREE CRUISE, BUT YOU MAY WIN DAMAGES

Thomas J.K. Schick, News Editor

You answer a phone call from a number with your area code, and the metallic voice on the other end informs you that “you have just won a free cruise!” But do not pack your bag yet — these calls are part of a scheme by telemarketers, and that “caller” is likely a robot. These unsolicited calls by “automatic telephone dialing system[s]” (colloquially known as “robocalls”) are illegal, and affected consumers may be entitled to damages.¹

Despite prohibition by the Telephone Consumer Protection Act of 1991 (TCPA),² robocalls, like the scenario described above, are commonplace, and attract the ire of both consumers and the Federal Communications Commission (FCC).³ An estimated 2.4 *billion* robocalls are made each month, and according

¹ 47 U.S.C. § 227(a)(1) (2012); 47 U.S.C. § 227(b)(1) (2012); *see also* Margaret A. Dale, *Capital One to Pay Largest TCPA Settlement on Record*, NAT’L L. REV. (Aug. 19, 2014), <https://www.natlawreview.com/article/capital-one-to-pay-largest-tcpa-settlement-record-0> (discussing \$75.5 million class action settlement against Capital One and three collection agencies’ for their alleged use of an automated dialer to call consumers without their consent).

² *See* 47 U.S.C. § 227(b)(1)(B)–(C) (“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 to initiate any telephone call to any residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party . . . [or] to use any telephone facsimile machine, computer, or other device to send, to a telephone facsimile machine, an unsolicited advertisement”).

³ *See Episode 789: Robocall Invasion*, NPR (Aug. 18, 2017), <http://www.npr.org/sections/money/2017/08/18/544448670/episode-789-robocall-invasion>.

to FCC Chairman Ajit Pai, “[r]obo-calls are the No. 1 consumer complaint to the FCC from members of the American public.”⁴

Stymying these nuisances is difficult because robocalling technology is constantly advancing. For example, robocallers can make calls appear that they are coming from the number of a neighbor within the recipient’s area code.⁵ This practice, known as “neighbor spoofing,” is utilized by telemarketers to increase the probability of a recipient answering the call.⁶

Many consumers have responded to the deluge of robocalls by bringing lawsuits under the TCPA.⁷ *Charvat v. Resort Marketing Group et al.* is a recent example of robocall litigation.⁸ This case involves a consumer class action lawsuit against several cruise lines, including Carnival, Royal Caribbean, and Norwegian, and the third-party travel agency who made robocalls to consumers on the cruise lines’ behalf.⁹ The plaintiffs allege that the defendants violated the TCPA by placing robocalls to consumers and informing them that they won “free cruise[s].”¹⁰ Before the case reached trial, the parties agreed to settle for an

⁴ Brian Fung, *There are 2.4 Billion Robo-calls Every Month. The FCC Wants to Help Block Them.*, WASH. POST (March 23, 2017), https://www.washingtonpost.com/news/the-switch/wp/2017/03/23/the-fcc-is-cracking-down-again-on-illegal-robocalls/?utm_term=.c8f0ff6f488c.

⁵ See *supra* note 3.

⁶ See *id.*

⁷ See Dale, *supra* note 1; see also *Mims v. Arrow Fin. Servs.*, 565 U.S. 368, 376 (2012) (resolving Circuit split and holding that both state and federal courts have subject matter jurisdiction over private TCPA lawsuits); Dena Aubin, *TCPA Lawsuits Surge, Financial Sector Hardest Hit*, REUTERS LEGAL (Aug. 31, 2017), <https://www.reuters.com/article/chamber-telemarketing/tcpa-lawsuits-surge-financial-sector-hardest-hit-report-idUSL2N1LH28A> (since July 2015, “3,121 TCPA lawsuits were filed in federal courts, up 46 percent from the 17 months prior”).

⁸ See Class Action Complaint, *Charvat v. Resort Marketing Grp. et al.*, No. 1:12-cv-05746 (N.D. Ill. July 23, 2012), ECF No. 1.

⁹ See Class Action Settlement Agreement and Release at 1, 9, *Charvat v. Resort Marketing Grp. et al.*, No. 1:12-cv-05746 (N.D. Ill. June 7, 2017), ECF No. 569-1. Note, though, that the cruise defendants denied knowing that the calls were made. *Id.* at 3. As part of the settlement, the cruise defendants do not admit any liability. *Id.* at 5.

¹⁰ Class Action Settlement Notice at 1, *Charvat v. Resort Marketing*

amount between \$7 million and \$12.5 million.¹¹ A consumer can determine if he or she is a member of the class by entering their phone numbers online.¹² Eligible class members may receive a maximum amount of \$300 per call and may file claims for up to three calls.¹³ The final settlement approval hearing is scheduled for April 4, 2018 before presiding Judge Andrea R. Wood of the United States District Court for the Northern District of Illinois.¹⁴

While *Charvat* is not the largest TCPA payout to date, it illustrates consumers affected by robocalls asserting their rights and seeking damages. Social media and news coverage has prompted consumers to see if they are class members and has increased public awareness about TCPA litigation.¹⁵ Significantly, settlements like *Charvat* may deter businesses and third-party marketers from making robocalls while the FCC and other regulators attempt to curb the practice.

Group et al., https://www.rmgcpasettlement.com/Documents/CQC_NOT.pdf (last visited Aug. 30, 2017).

¹¹ See *supra* note 9, at 16.

¹² See *Filing a Claim*, *Charvat v. Resort Marketing Group, Inc. et al.*, <https://www.rmgcpasettlement.com/Landing.aspx> (last visited Aug. 30, 2017).

¹³ See *supra* note 9, at 85.

¹⁴ See *supra* note 10, at 5.

¹⁵ See, e.g., Christopher Maynard, ‘Free Cruise’ Spam Calls Could Net Consumers Up to \$900 in Restitution, *CONSUMER AFFS.* (Aug. 16, 2017), <https://www.consumeraffairs.com/news/free-cruise-spam-calls-could-net-consumers-up-to-900-in-restitution-081617.html>.