

JURISDICTION AND VENUE

4. Jurisdiction is conferred on this Court by 28 U.S.C. § 1332(a).

5. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, by Rules 57 and 65 of the Federal Rules of Civil Procedure, and by the general legal and equitable powers of this Court.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(a)(1) and (a)(2).

PARTIES

7. Plaintiff, John Doe, was and is at all relevant times herein, a citizen of a State within the United States, but not of any of the States in which Defendants are citizens for purposes of diversity jurisdiction.

8. Plaintiff, Jane Doe, was and is at all relevant times herein, a citizen of a State within the United States, but not of any of the States in which Defendants are citizens for purposes of diversity jurisdiction.

9. Defendant, CBS Broadcasting Inc. (hereinafter "CBS"), was and is at all relevant times herein, a corporation organized and existing under the laws of New York. CBS maintains its executive offices in New York City. CBS operates a television network and distributes news programming to various affiliates, and either directly or through its parent, CBS Corporation, owns approximately 14 television stations, approximately 77 radio stations, and several cable television networks.

10. Defendant, National Broadcasting Company, Inc. (hereinafter "NBC"), was and is at all relevant times herein, a corporation organized and existing under the laws of Delaware. NBC maintains its executive offices in New York City. NBC produces network news programming which is distributed to various affiliates, and it owns approximately 12 television stations which produce

their own news programs. NBC also produces and distributes news and information programming through its MSNBC cable channel and business news through its CNBC cable channel.

11. Defendant, American Broadcasting Companies, Inc. (hereinafter “ABC”), was and is at all relevant times herein, a corporation organized and existing under the laws of Delaware. ABC maintains its executive offices in New York City. ABC owns and operates ABC News, a national news gathering and news broadcasting organization.

12. Defendant, Cable News Network L.P., L.L.L.P. (hereinafter “CNN”), was and is at all relevant times herein, a limited liability limited partnership organized and existing under the laws of Delaware. CNN maintains its executive offices in Atlanta, Georgia. CNN creates, produces, and distributes, nationally and worldwide, 24-hour television news programming services.

13. Defendant, FOX News Network, LLC (hereinafter “FOX NEWS”), was and is at all relevant times herein, a limited liability company organized and existing under the laws of Delaware. CNN maintains its executive offices in Los Angeles, California. FOX NEWS owns and operates the Fox News Channel, a cable television station that provides news coverage and commentary.

FACTS

14. The members of the Defendant Class and/or third parties acting on their behalf (hereinafter collectively “members of the Defendant Class”) engage in processes called random digit dialing and sequential dialing, in which computers generate telephone numbers to call randomly or sequentially.

15. The members of the Defendant Class engage in random digit dialing or sequential dialing with the knowledge and intent that the proportion of unlisted and unpublished telephone numbers that the members of the Defendant Class call will approximate the total proportion of unlisted and unpublished telephone numbers in the geographical area to which the members of the

Defendant Class are calling.

16. The members of the Defendant Class have never sought, nor been given, either the explicit or implicit consent of the members of the Plaintiff Class to call them.

17. A telephone is personal property.

18. The members of the Defendant Class interfere with the rights and abilities of the members of the Plaintiff Class to use their telephones.

19. Plaintiff John Doe has an unlisted, unpublished telephone number, but faces a constant threat that the members of the Defendant Class will call that number by engaging in random digit dialing or sequential dialing.

20. Plaintiff Jane Doe wishes to obtain a second telephone line, in connection with which she would obtain an unlisted telephone number, but has refrained from doing so because of the constant threat that the members of the Defendant Class would call her by engaging in random digit dialing or sequential dialing.

CLASS ALLEGATIONS

The Plaintiff Class

21. Plaintiffs bring this action as a Class Action pursuant to Federal Rules of Civil Procedure 23 (b)(1)(a), 23 (b)(1)(b), and 23 (b)(2), individually and on behalf of all other individuals and entities with unlisted and unpublished telephone numbers.

22. The members of the Plaintiff Class are so numerous that joinder of all members is impracticable.

23. There are millions of individuals and entities whose claims are similar to Plaintiffs' claims, which are typical of the claims of absent Plaintiff Class members. Members of the Plaintiff Class are threatened by the unlawful conduct of the members of the Defendant Class in the same

manner that the Plaintiffs are threatened by such unlawful conduct.

24. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiff has retained competent litigation counsel. Plaintiffs have no interests which are antagonistic to, or in conflict with, the members of the Plaintiff Class.

25. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the Plaintiff Class is so numerous that joinder of all members is impracticable, and because the damages suffered by most of the individual members of the Plaintiff Class are too small to render prosecution of the claims asserted herein economically feasible on an individual basis, the expense and burden of individual litigation makes it impractical for members of the Plaintiff Class to adequately address the wrongs complained of herein. Plaintiffs know of no impediments to the effective management of this action as a Plaintiff Class Action.

26. Common questions of law and fact predominate over questions which affect only individual Plaintiff Class Members. Among the questions of law and fact common to the Plaintiff Class are:

- (i) whether a telephone is property;
- (ii) whether the mere possession of a telephone by itself constitutes consent to interfere with its owner's use of it;
- (iii) whether the interference with one's telephone without the owner's consent constitutes a trespass to chattels;
- (iv) whether the Plaintiff Class is entitled to a declaratory judgment; and
- (v) whether the Plaintiff Class is entitled to injunctive relief.

27. Plaintiffs have alleged the foregoing based upon their knowledge and upon the investigation of their counsel, and believe that substantial evidentiary support will exist for the

allegations set forth in paragraphs “1” through “20” inclusive after a reasonable opportunity to conduct discovery.

The Defendant Class

28. The Defendant Class is authorized by Federal Rules of Civil Procedure 23 (b)(1)(a) and (b)(1)(b), individually and on behalf of all other individuals and entities that engage in either random digit dialing or sequential dialing.

29. The members of the Defendant Class are so numerous that joinder of all members is impracticable.

30. There are thousands of individuals and entities whose defenses will be similar to Defendants’ claims, which will be typical of the defenses of absent Defendant Class members. Members of the Defendant Class all engage in the unlawful conduct in the same manner that Defendants engage in such unlawful conduct.

31. Defendants will fairly and adequately protect the interests of the Defendant Class. Defendants will retain competent litigation counsel. Defendants have no interests which are antagonistic to, or in conflict with, the members of the Defendant Class.

32. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Because the Defendant Class is so numerous that joinder of all members is impracticable, the expense and burden of individual litigation makes it impractical for members of the Defendant Class to adequately address the claims made against them. There are no impediments to the effective management of this action as a Defendant Class Action.

33. Common questions of law and fact predominate over questions which affect only individual Defendant Class Members. Among the questions of law and fact common to the Defendant Class are:

- (i) whether a telephone is property;
- (ii) whether the mere possession of a telephone by itself constitutes consent to interfere with its owner's use of it;
- (iii) whether the interference with one's telephone without the owner's consent constitutes a trespass to chattels;
- (iv) whether the Plaintiff Class is entitled to a declaratory judgment; and
- (v) whether the Plaintiff Class is entitled to injunctive relief.

COUNT I

Common-Law Trespass to Chattels

- 34. Plaintiffs incorporate by reference each and every preceding paragraph.
- 35. This count arises under the common law of the fifty States.
- 36. Each telephone call by a member of the Defendant Class to a member of the Plaintiff Class constitutes a trespass to chattels.
- 37. As a result of the foregoing, Plaintiffs and the members of the Plaintiff Class are entitled to a judgment, pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that the aforementioned conduct of the members of the Defendant Class constitutes trespass to chattels.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

(a) Declare and provide that this action be maintained as a Plaintiff Class Action on behalf of the members of the Plaintiff Class;

(b) Declare and provide that this action be maintained as a Defendant Class Action on behalf of the members of the Defendant Class;

(c) Issue a judgment declaring that the use of random digit dialing and sequential dialing to call unlisted and unpublished telephone numbers by members of the Defendant Class constitutes trespass to chattels;

(d) Preliminarily and permanently enjoin the members of the Defendant Class, their agents, servants, employees, agencies, and all persons in active concert or participation with the members of the Defendant Class or with any one of the foregoing, from engaging in random digit dialing and sequential dialing to call unlisted and unpublished telephone numbers; and

(e) Award costs, disbursements, and reasonable attorney's fees, and such other and further relief as this Court deems just and proper.

Dated: January 12, 2004

Yours, etc.,

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