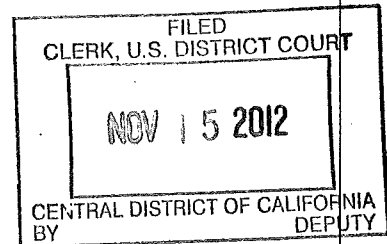


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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PAUL GANNON, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

NETWORK TELEPHONE SERVICES, INC., a
California corporation; DECADE
COMMUNICATIONS, INC., a California
corporation; FRONTIER CREDIT, INC., a
California corporation; AMERICAN
OPERATOR SERVICES, INC., a California
corporation; JOHN and JANE DOES 1 through
100; and JOHN DOE ENTITIES 1 through 10,

Defendants.

NO. **CV12-9777 RGR(PJW)**

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF FOR VIOLATION OF
47 U.S.C. § 227**

DEMAND FOR JURY TRIAL

I. INTRODUCTION

1.1 Plaintiff Paul Gannon, individually and as a class representative for all persons in the United States who have received unsolicited commercial text messages on their cellular telephones from Defendants, brings this class action to stop Defendants' practice of making unsolicited text message calls to cellular telephones, and to obtain redress for all persons

CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
FOR VIOLATION OF 47 U.S.C. § 227 - 1

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

4 1.2 Defendant Network Telephone Services, Inc. ("NTS") is engaged in the business
5 of "telephone entertainment" and related billing services. NTS's services include "phone sex"
6 and "SexText," for which consumers are charged by the minute or text to engage in sexually
7 explicit conversations over the telephone. NTS, either directly or through agents or affiliates;
8 operates one or more call centers in which it employs "telephone actresses" to engage in
9 sexually explicit conversations with consumers.

10 1.3 NTS markets its phone sex business through the unauthorized transmission of
11 sexually explicit advertisements in the form of "text message" calls to the cellular telephones of
12 consumers throughout the nation.

13 1.4 By effectuating these unauthorized text message calls (hereinafter, "wireless
14 spam"), NTS has caused consumers actual harm, not only because consumers were subjected to
15 the aggravation that necessarily accompanies wireless spam and the distress of receiving an
16 unsolicited sexually explicit text message, but also because consumers frequently have to pay
17 their cell phone service providers for the receipt of such wireless spam.

18 1.5 In order to redress these injuries, Plaintiff, on behalf of himself and a nationwide
19 class of similarly situated individuals, brings suit under the Telephone Consumer Protection
20 Act, 47 U.S.C. § 227, *et seq.* ("47 U.S.C. § 227"), which prohibits unsolicited voice and text
21 calls to cell phones.

22 1.6 On behalf of the class, Plaintiff seeks an injunction requiring Defendants to
23 cease all wireless spam activities and an award of statutory damages to the class members,
24 together with costs and reasonable attorneys' fees.

II. PARTIES

1
2 2.1 Plaintiff Paul Gannon (“Plaintiff”) is an individual citizen and resident of the
3 State of Colorado.

4 2.2 Defendant NTS is a California corporation that maintains its principal place of
5 business at 21135 Erwin Street, Woodland Hills, California 91367. NTS is, and all times
6 mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

7 2.3 Defendant Decade Communications, Inc. (“Decade”) is a California corporation
8 that maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California
9 91367. Decade is, and all times mentioned herein was, a “person” as defined by 47 U.S.C.
10 § 153(39).

11 2.4 Defendant Frontier Credit, Inc. (“Frontier”) is a California corporation that
12 maintains its principal place of business at 21135 Erwin Street, Woodland Hills, California
13 91367. Frontier is, and all times mentioned herein was, a “person” as defined by 47 U.S.C.
14 § 153(39).

15 2.5 Defendant American Operator Services, Inc. (“AOS”) is a California
16 corporation that maintains its principal place of business at 21135 Erwin Street, Woodland
17 Hills, California 91367. AOS is, and all times mentioned herein was, a “person” as defined by
18 47 U.S.C. § 153(39).

19 2.6 Defendants NTS, Decade, Frontier and AOS have acted in concert in doing the
20 things alleged herein, and/or have used each other as mere alter egos or agents in doing the
21 things alleged herein.

22 2.7 Defendants JOHN and JANE DOES 1 through 100, whose true names are
23 unknown, are individuals who have acted in concert with Defendants in doing the things
24 alleged herein, and/or have used other Defendants herein as mere alter egos or agents in doing
25 the things alleged herein.

1 owner's person, calls to cellular telephones, including SMS messages, may be received by the
2 called party virtually anywhere worldwide.

3 4.4 Unlike more conventional advertisements, wireless spam actually costs its
4 recipients money, because cell phone users must frequently pay their wireless service providers
5 either for each text message call they receive or incur a usage allocation deduction to their text
6 plan, regardless of whether or not the message is authorized.

7 4.5 Beginning no later than the year 2009, Defendants directed the mass
8 transmission of wireless spam to the cell phones nationwide of what they hoped were potential
9 customers of Defendants' phone sex services.

10 4.6 For instance, on or about September 4, 2012, Plaintiff's cell phone rang,
11 indicating that a text call was being received. The "from" field of such transmission was
12 identified as "18183070155," which, upon information and belief, is a telephone number
13 assigned to Defendants. The body of such text message read: "Hot honeys r ready to pleasure u
14 and make u cumm. \$25 credit on your first call! Call 800-999-2428. Want to SEXTXT,
15 Rply A! Rply END to be remvd. (18+,\$)."

16 4.7 The telephone number in the body of the text message to Plaintiff, 800-999-
17 2428, is, upon information and belief, also assigned to Defendants.

18 4.8 At no time did Plaintiff consent to the receipt of the above-referenced message
19 or any other such wireless spam text messages from Defendants.

20 V. CLASS ACTION ALLEGATIONS

21 5.1 Class Definition. Plaintiff brings this action pursuant to Federal Rule of Civil
22 Procedure 23(b)(2) and Rule 23(b)(3) on behalf of himself and a class (the "Class") defined as
23 follows:

24 All persons in the United States and its Territories who received
25 one or more unauthorized text messages by or on behalf of
26 Defendants, or their agents or affiliates.

1 Excluded from the Class are Defendants, any entity in which a Defendant has a controlling
2 interest or that has a controlling interest in a Defendant, Defendants' employees or agents, legal
3 representatives, assignees, and successors. Also excluded are the judge to whom this case is
4 assigned and any member of the judge's immediate family.

5 5.2 Numerosity. Defendants have sent unsolicited, sexually explicit text messages
6 similar to that received by Plaintiff to numerous other Class members without their prior
7 consent. The Class members number in the thousands, such that joinder of all members is
8 impracticable. The disposition of the claims of the Class in a single action will provide
9 substantial benefits to all parties and the Court.

10 5.3 Adequacy. Plaintiff will fairly and adequately represent and protect the interests
11 of the other members of the Class. Plaintiff has retained counsel with substantial experience in
12 prosecuting complex litigation and class actions. Plaintiff and their counsel are committed to
13 vigorously prosecuting this action on behalf of the members of the Class, and have the financial
14 resources to do so. Neither Plaintiff, nor his counsel, has any interest adverse to those of the
15 other members of the Class or each other.

16 5.4 Superiority. Absent a class action, most members of the Class would find the
17 cost of litigating their claims to be prohibitive, and will have no effective remedy. The class
18 treatment of common questions of law and fact is also superior to multiple individual actions or
19 piecemeal litigation in that it conserves the resources of the courts and the litigants, and
20 promotes consistency and efficiency of adjudication.

21 5.5 Typicality. The factual and legal bases of Defendants' liability to Plaintiff and
22 to the other members of the Class are the same, resulting in injury to Plaintiff and to all of the
23 other members of the Class as a result of the transmission of the wireless spam alleged herein.
24 Plaintiff and the other Class members have all suffered harm and damages as a result of
25 Defendants' unlawful and wrongful conduct as a result of the transmission of the wireless
26

1 section 227(b)(3)(B), to a minimum of \$500 in damages for each violation, and an injunction to
2 prevent further violations.

3 6.5 Because Defendants had knowledge that Plaintiff and the Class did not consent
4 to the receipt of the aforementioned wireless spam, the Court should, pursuant to section 47
5 U.S.C. § 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff and the
6 other members of the Class.

7 **VII. RELIEF REQUESTED**

8 Plaintiff requests the Court enter judgment against Defendants as follows:

- 9 A. An order certifying the Class as defined above;
- 10 B. An award of actual and statutory damages;
- 11 C. An injunction requiring Defendants to cease all wireless spam activities;
- 12 D. An award of reasonable attorneys' fees and costs; and
- 13 E. Such further and other relief as the Court deems reasonable and just.

14 **VIII. DEMAND FOR JURY TRIAL**

15 Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury of any and all issues
16 in this action so triable of right.

1 RESPECTFULLY SUBMITTED AND DATED this 13th day of November, 2012.

2 TERRELL MARSHALL DAUDT & WILLIE PLLC

3
4
5 By 

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27 *Attorneys for Plaintiff*

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