

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

RAMONA CLARK and DYLAN  
SCHLOSSBERG, individually and on behalf  
of all others similarly situated,

*Plaintiffs,*

v.

GANNETT CO., INC., a Delaware  
corporation,

*Defendant.*

CASE No.

2016CH06603  
CALENDAR/ROOM 11  
TIME 00:00  
Class Action

FILED  
MAY 12 PM 4:04  
DOROTHY BROWN CLERK

**CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiffs Ramona Clark and Dylan Schlossberg bring this Class Action Complaint against Defendant Gannett Co., Inc. to stop its practice of making unsolicited calls to the cellular telephones of consumers nationwide, and to obtain redress for all persons injured by its conduct. Plaintiffs allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

**NATURE OF THE ACTION**

1. Defendant Gannett is a media and marketing company with a portfolio of broadcast, digital, mobile and publishing companies. Gannett's eighty-two daily newspapers, including *USA TODAY*, reach over 10 million readers nationwide.
2. In an effort to increase subscriptions to its newspapers, Gannett directed its agents to make telemarketing calls to thousands of consumers' cellular telephones. Gannett did not obtain prior express consent from consumers to make such calls, and in many cases, ignored consumer requests to no longer be called and, therefore, violated the Telephone Consumer

Protection Act, 47 U.S.C. § 227 (“TCPA”).

3. The TCPA was enacted to protect consumers from unsolicited and repeated commercial telephone calls exactly like those alleged in this case. Defendant made these calls despite the fact that neither Plaintiffs, nor the other members of the putative Class, ever provided express consent to receive such telemarketing calls.

4. By making the phone calls at issue, Defendant and/or its agents caused Plaintiffs and the other members of the Class to suffer actual harm, including the aggravation and nuisance that necessarily accompanies the receipt of unsolicited phone calls and the monies paid to their telephone carriers for the receipt of such calls.

5. In response to Defendant’s unlawful conduct, Plaintiffs file the instant lawsuit and seek an injunction requiring Defendant and/or its agents to cease all unsolicited calling activities and an award of statutory damages to the members of the Class under the TCPA, together with costs and reasonable attorneys’ fees.

#### **PARTIES**

6. Plaintiff Ramona Clark is a natural person and citizen of the State of Illinois.

7. Plaintiff Dylan Schlossberg is a natural person and citizen of the State of New York.

8. Defendant Gannett Co., Inc. is a corporation existing under the laws of the State of Delaware with its principal place of business located at 7950 Jones Branch Drive, McLean, Virginia 22107. Gannett is also registered to conduct business in the State of Illinois (as Illinois Secretary of State File Number 70291991). Gannett conducts business throughout this County, the State of Illinois, and the United States.

## JURISDICTION AND VENUE

9. This Court has jurisdiction over Defendant pursuant to 735 ILCS 5/2-209 because it is registered to and does conduct business transactions in Illinois, has committed tortious acts in Illinois, and has offices located in Illinois. Additionally, this Court has jurisdiction over Plaintiff Clark because she is a resident of the State of Illinois.

10. Venue is proper in Cook County because Defendant is registered to and does conduct significant amounts of business transactions within Cook County, has offices located in Cook County, and because the wrongful conduct giving rise to this case occurred in, was directed to individuals in Cook County. Venue is additionally proper because Plaintiff Clark resides in Cook County.

## COMMON FACTUAL ALLEGATIONS

11. Defendant made (or had made on its behalf) millions of telephone calls to Plaintiffs' and the members of the Class's cellular telephones without consent for the express purpose of obtaining subscribers for its newspaper publications, including *USA TODAY*, *Asbury Park Press*, *Daily Record*, *The Burlington Free Press*, *The Courier-Journal*, *The News Leader*, and *The Journal News*.

12. Defendant made (and/or had made on its behalf) many of the calls from the phone number (732) 362-0402, among others.

13. The call recipients include, but may not be limited to, former Gannett newspaper subscribers who have chosen to not re-subscribe and no longer do business with Gannett.

14. To regain these lost customers or attract new subscribers, Defendant Gannett hired agents, including Marketing Plus Inc. to repeatedly call Class members' telephones in an attempt to convince them to sign up for or renew their subscriptions.

15. These calls were placed on a near daily basis, and often multiple times per day. Even worse, when a consumer answered one of the calls and expressly requested to not receive any further calls, Defendant and/or its agents persisted—even after multiple cancellation requests.

16. Defendant made these calls, or directed them to be made, using an automatic telephone dialing system, in this instance a system commonly referred to as a “predicative dialer,” to call numerous telephone numbers simultaneously and without the calls being manually dialed.

17. Indeed, one of Defendant’s agents explicitly advertises its use of such automatic telephone dialing systems on its website.<sup>1</sup>

18. Neither Plaintiffs nor the other members of the putative Class ever consented to have Defendant (or its agents) make telemarketing calls to them, and certainly not after their business relationship (if any) had ended.

#### **FACTS SPECIFIC TO PLAINTIFFS CLARK AND SCHLOSSBERG**

19. Starting in late 2013, Plaintiffs Clark and Schlossberg began receiving telemarketing calls from Defendant (and/or its agent, Marketing Plus) on their cellular telephones, including from the number (732) 362-0402.

20. The telemarketing calls, made by Defendant’s agent Marketing Plus on behalf of and for the benefit of Defendant Gannett, were for the purpose to persuading Plaintiffs to sign up

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<sup>1</sup> For example, Marketing Plus’s website boasts its “unrivaled dialing capabilities” and explains that its “dialing application recognizes and detects no answers, busy signals, disconnects and answering machines [so that w]hen the system detects a live connection, it passes the call with the associated data to the next available agent in less than .25 seconds, virtually eliminating the possibility of a called party hanging up before the agent is on the line.”). See *Our Technology*, MARKETING PLUS INC., <http://www.marketingplusinc.com/our-technology/> (last visited April 28, 2016).

for or to re-subscribe to its newspaper publications.

21. Plaintiffs never provided Defendant and/or its agent with consent to make such telemarketing calls to their cellphone numbers.

22. Nonetheless, Defendant and/or its agent Marketing Plus used an automatic telephone dialing system to repeatedly call Plaintiffs' cellular telephones without their prior express consent and despite their requests to stop. For instance, Defendant called Plaintiff Schlossberg on a regular basis for over a year, often multiple times per week, and more specifically on at least 10 occasions alone from October 2013 to December 2013 despite him requesting over 10 times that Defendant stop calling him.

23. Defendant knew that it and/or its agent Marketing Plus used an automatic telephone dialing system to make these calls, without consent, to Plaintiffs' cellular telephones, and thus knowingly and repeatedly violated the TCPA.

#### CLASS ALLEGATIONS

24. **Class Definition:** Plaintiffs Clark and Schlossberg bring this action pursuant to 735 ILCS 5/2-801 on behalf of themselves and a Class of similarly situated individuals defined as follows:

All persons in the United States or its territories or possessions to whom Gannett or anyone acting on Gannett's behalf placed or caused to be placed a call to such person's telephone number when it was assigned to a cellular telephone using an automatic telephone dialing system or an artificial or prerecorded voice between January 2, 2010 and the present.

The following persons are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families, (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former employees, officers and directors, (3) persons who properly

execute and file a timely request for exclusion from the Class, (4) persons who have had their claims in this matter finally adjudicated and/or otherwise released, (5) the legal representatives, successors, or assigns of any such excluded persons, and (6) Plaintiffs' counsel and Defendant's counsel.

25. **Numerosity:** The exact size of the Class is unknown and not available to Plaintiffs at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant has made telephone calls to thousands of consumers who fall into the definitions of the Class. Members of the Class can be identified through Defendant's records.

26. **Commonality and Predominance:** There are many questions of law and fact common to the claims of Plaintiffs and the Class, and those questions predominate over any questions that may affect individual members of the Class. Common and predominant questions for the Class include, but are not necessarily limited to, the following:

- (a) whether Defendant's conduct violated the TCPA;
- (b) whether Defendant and/or its agents made the telephone calls to the Class members utilizing an automatic telephone dialing system;
- (c) whether Defendant and/or its agents systematically made telephone calls to members of the Class who did not provide Defendant and/or its agents with their prior express consent to receive such telephone calls, as required by the TCPA;
- (d) whether members of the Class are entitled to treble damages based on the willfulness of Defendant's conduct.

27. **Adequate Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class, and have retained counsel competent and experienced in



complex class actions. Plaintiffs have no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

28. **Appropriateness:** This class action is appropriate for certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy and because joinder of all members of the Class is impracticable. The damages suffered by the individual members of the Class are likely to have been small relative to the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's wrongful conduct. Thus, it would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would not be preferable to a class action because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. Economies of time, effort, and expense will be fostered and uniformity of decisions will be ensured.

**FIRST CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227**  
**(On behalf of Plaintiffs and the Class)**

29. Plaintiffs incorporate the foregoing allegations as if fully set forth herein.

30. Defendant and/or its agents made, or directed to be made, unsolicited telephone calls to cellular telephone numbers belonging to Plaintiffs and other members of the Class without their prior express consent to receive such calls.

31. Defendant and/or its agents made the telephone calls, or directed them to be made, using equipment that had the capacity to store or produce lists of telephone numbers, equipment that has the capacity to generate and store numbers randomly or sequentially, and the

capacity to dial such numbers.

32. Defendant utilized equipment that made, or had made on its behalf, the telephone calls to Plaintiffs' and other members of the Class's cellular telephones simultaneously and without human intervention.

33. By making, or having made on its behalf, the unsolicited telephone calls to Plaintiffs' and the Class members' cellular telephones without prior express consent, and by utilizing an automatic telephone dialing system to make those calls, Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii).

34. As a result of Defendant's unlawful conduct, Plaintiffs and the members of the Class suffered actual damages in the form of monies paid to receive the unsolicited telephone calls on their cellular phones and under 47 U.S.C. § 227(b)(3)(B) are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation of the TCPA.

35. Should the Court determine that Defendant's conduct was willful and knowing, the Court may, pursuant to 47 U.S.C. § 227(b)(3), treble the amount of statutory damages recoverable by Plaintiffs and the other members of the Class.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs Ramona Clark and Dylan Schlossberg, individually and on behalf of the Class, pray for the following relief:

- A. An order certifying the Class as defined, appointing Plaintiffs Clark and Schlossberg as representatives of the Class, and appointing their counsel as Class Counsel;
- B. An award of actual and statutory damages;
- C. An injunction requiring Defendant to cease all unsolicited calling activities, and otherwise protecting the interests of the Class;



- D. An award of reasonable attorneys' fees and costs; and
- E. Such other and further relief that the Court deems reasonable and just.

**JURY DEMAND**

Plaintiffs request a trial by jury of all claims that can be so tried.

Respectfully submitted,

**RAMONA CLARK and DYLAN  
SCHLOSSBERG**, individually and on behalf of all  
others similarly situated,

Dated: May 12, 2016

By: /s/ Eve-Lynn J. Rapp  
One of Plaintiffs' Attorneys

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*\*Pro hac vice* admission to be sought.