

1 J AURIGUE LAW GROUP  
Michael J. Jaurigue (SBN 208123)  
2 Abigail A. Zelenski (SBN 228610)  
David Zelenski (SBN 231768)  
3 Christine M. Pham (SBN 278247)  
114 North Brand Boulevard, Suite 200  
4 Glendale, California 91203  
michael@jlglawyers.com  
5 abigail@jlglawyers.com  
david@jlglawyers.com  
6 christine@jlglawyers.com  
Telephone: (818) 630-7280  
7 Facsimile: (888) 879-1697

8 G LANCY BINKOW & GOLDBERG LLP  
Lionel Z. Glancy (SBN 134180)  
9 Mark S. Greenstone (SBN 199606)  
1925 Century Park East, Suite 2100  
10 Los Angeles, California 90067  
Telephone: (310) 201-9150  
11 Facsimile: (310) 201-9160  
E-mail: info@glancylaw.com

12 *Attorneys for Plaintiff*

13  
14  
15 **UNITED STATES DISTRICT COURT**  
16 **EASTERN DISTRICT OF CALIFORNIA**

17 PAUL STORY, individually and on behalf  
18 of all others similarly situated,

19 Plaintiff,

20 v.

21 MAMMOTH MOUNTAIN SKI AREA,  
22 LLC, a Delaware limited-liability  
company,

23 Defendant.

Case No.

**CLASS-ACTION COMPLAINT**

1. Violation of the Telephone  
Consumer Protection Act, 47 U.S.C.  
§ 227

**DEMAND FOR JURY TRIAL**

**INTRODUCTION**

1  
2 1. Plaintiff PAUL STORY brings this class action on behalf of himself and all  
3 others similarly situated against MAMMOTH MOUNTAIN SKI AREA, LLC  
4 (“MAMMOTH”), a Delaware limited-liability company, pursuant to Rule 23 of the  
5 Federal Rules of Civil Procedure.

6 2. As alleged below, Defendant has violated the Telephone Consumer  
7 Protection Act (the “TCPA”), 47 U.S.C. § 227, through its unauthorized contact of  
8 consumers on their cellular telephones. Specifically, Defendant has violated the TCPA  
9 by contacting individuals on their cellular telephones through an artificial telephone  
10 dialing system and/or by using an artificial or prerecorded voice without first obtaining  
11 their express written consent, invading their right to privacy.

12 3. Pursuant to 47 U.S.C. § 227(b)(3), Plaintiff and Class Members are entitled  
13 to, *inter alia*, statutory damages and injunctive relief for Defendant’s violations.

**JURISDICTION AND VENUE**

14  
15 4. **Jurisdiction.** Federal and state courts have concurrent jurisdiction over suits  
16 arising under the TCPA. See Mims v. Arrow Fin. Servs., LLC, 132 S. Ct. 740, 745  
17 (2012). This Court therefore has subject-matter jurisdiction of this action pursuant to 28  
18 U.S.C. § 1331. This Court has personal jurisdiction over MAMMOTH because  
19 MAMMOTH has purposefully availed itself of the resources and protection of California,  
20 conducts business in and has systematic contacts with California, and resides in  
21 California.

22 5. **Venue.** As alleged more particularly below, venue is proper in the United  
23 States District Court for the Eastern District of California pursuant to 28 U.S.C. § 1391  
24 because MAMMOTH resides in the County of Mono.

**PARTIES**

25  
26 6. Plaintiff is, and at all times relevant to this action was, a California resident  
27 of the County of Los Angeles. He is, and at all times relevant to this action was, a  
28 “person” as defined under 47 U.S.C. § 153.



1 services.

2 12. Plaintiff is informed and believes, and based thereon alleges, that his  
3 cellular-telephone number was entered into a database and that MAMMOTH  
4 subsequently used equipment capable of storing and/or producing telephone numbers, as  
5 well as capable of dialing such numbers, to make the above unsolicited, prerecorded- or  
6 artificial-voice telephone calls *en masse* to consumers within that database, including  
7 Plaintiff. Indeed, given the sheer volume of telephone calls made to the public—as  
8 described in paragraph 14, *infra*—transmission was possible only through the use of such  
9 automated equipment.

10 13. The above-alleged calls that Plaintiff received were clearly sent without an  
11 emergency purpose, as they were sent for the purposes of advertisement or telemarketing  
12 to encourage the purchase of goods and services at the MAMMOTH ski resort in  
13 Mammoth Lakes, California.

14 14. Plaintiff is informed and believes, and based thereon alleges, that  
15 MAMMOTH placed thousands of similar calls, all for advertising or telemarketing  
16 purposes, to the cellular-telephone numbers of members of the general public using the  
17 equipment referenced in paragraph 12, *supra*. Plaintiff is further informed and believes,  
18 and based thereon alleges, that MAMMOTH never obtained signed authorizations  
19 expressly permitting advertising or telemarketing calls from any of the individuals to  
20 whom the calls were placed.

21 ***CLASS-ACTION ALLEGATIONS***

22 15. Plaintiff seeks to represent the following Class under Rule 23 of the Federal  
23 Rules of Civil Procedure: All persons throughout the United States who, since October  
24 16, 2013, received one or more prerecorded- or artificial-voice telephone calls on their  
25 cellular telephones from MAMMOTH, or any person or entity acting on behalf of  
26 MAMMOTH, made for a marketing or advertising purpose.

27 16. Plaintiff reserves the right to amend or modify the proposed Class, or to  
28 propose subclasses or limitations to particular issues, in response to facts later

1 ascertained.

2 17. **Numerosity.** The identities of Class Members may be ascertained from  
3 MAMMOTH's own business and marketing records, as well as the records of  
4 MAMMOTH's telephone provider(s). Joinder of all Class Members would be  
5 impracticable due to the sizeable number of such Members and their likely lack of  
6 resources to initiate individual claims. Plaintiff estimates that thousands of telephone  
7 calls were sent to well-over the forty individuals required for numerosity purposes. Also,  
8 as explained below, the amount that is owed to any given Class Member under the TCPA  
9 is relatively small, making it impractical for them to bring their own individual suits.

10 18. **Commonality.** There are questions of law and fact that are common to the  
11 Class that predominate over any questions affecting only individual Class Members.  
12 These common questions include, without limitation:

13 a) Whether the prerecorded- or artificial-voice telephone calls constitute  
14 telemarketing or advertising within the meaning of the TCPA and its regulations (quoted  
15 below);

16 b) Whether the equipment used to make the prerecorded- or artificial-  
17 voice telephone calls constitutes an automatic telephone dialing system within the  
18 meaning of the TCPA and its regulations;

19 c) Whether prior express written consent was required under the TCPA  
20 before making any of the prerecorded- or artificial-voice telephone calls; and

21 d) Whether the outright failure to secure any prior express written  
22 consent constitutes willful and knowing behavior within the meaning of the TCPA and its  
23 regulations.

24 19. **Typicality.** Plaintiff's claims are typical of those of the Class because he  
25 received prerecorded- or artificial-voice telephone calls from MAMMOTH advertising or  
26 promoting MAMMOTH's goods or services on or after October 16, 2013, on his cellular  
27 telephone; he never provided prior express written consent to receive those calls; and the  
28 calls were placed to him using the same equipment used to place calls to all Class



1 individual privacy rights against legitimate telemarketing practices. In enacting this  
2 statute, Congress found:

3 (1) The use of the telephone to market goods and services to the home  
4 and other businesses is now pervasive due to the increased use of cost-  
effective telemarketing techniques.

5 . . . .

6 (10) Evidence compiled by the Congress indicates that residential  
7 telephone subscribers consider automated or prerecorded telephone calls,  
regardless of the content or the initiator of the message, to be a nuisance and  
an invasion of privacy.

8 (11) Technologies that might allow consumers to avoid receiving such  
9 calls are not universally available, are costly, are unlikely to be enforced, or  
place an inordinate burden on the consumer.

10 (12) Banning such automated or prerecorded telephone calls to the  
11 home, except when the receiving party consents to receiving the call or when  
such calls are necessary in an emergency situation affecting the health and  
12 safety of the consumer, is the only effective means of protecting telephone  
consumers from this nuisance and privacy invasion.

13 Telephone Consumer Protection Act of 1991, PL 102–243, December 20, 1991, 105 Stat  
14 2394.

15 24. The TCPA specifically prohibits automated calls or messages to consumers’  
16 cellular-telephone numbers without the express consent or permission of the consumers:

17 It shall be unlawful for any person within the United States, or any person  
18 outside the United States if the recipient is within the United States (A) to  
make any call (other than a call made for emergency purposes or made with  
19 the prior express consent of the called party) using any automatic telephone  
dialing system or an artificial or prerecorded voice . . . (iii) to any telephone  
20 number assigned to a . . . cellular telephone service . . . .

21 47 U.S.C. § 227(b)(1).

22 25. Under the relevant regulation, effective October 16, 2013, “prior express  
23 consent” as used in subsection (b)(1)(A)(iii) of the TCPA means “prior express *written*  
24 consent” for all telemarketing or advertising messages. 47 C.F.R. § 64.1200(a)(2)  
25 (emphasis supplied). Such consent must be signed by the consumer, must state that the  
26 consumer is agreeing to receive future telemarketing or advertising calls and messages,  
27 and must be executed independent of any purchase of goods or services. Id.  
28 § 64.1200(f)(8).



