

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS KIA ELDER DEFENDANTS COMCAST CORPORATION
(b) County of Residence of First Listed Plaintiff PHILADELPHIA
(c) Attorneys (Firm Name, Address, and Telephone Number) CRAIG THOR KIMMEL, KIMMEL & SILVERMAN, P.C.

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)
III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Grid containing categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)
[X] 1 Original Proceeding [] 2 Removed from State Court [] 3 Remanded from Appellate Court [] 4 Reinstated or Reopened [] 5 Transferred from Another District (specify) [] 6 Multidistrict Litigation

VI. CAUSE OF ACTION
Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
47 U.S.C. § 227 et seq.
Brief description of cause:
TELEPHONE CONSUMER PROTECTION ACT

VII. REQUESTED IN COMPLAINT:
[] CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [] No

VIII. RELATED CASE(S) IF ANY (See instructions):
JUDGE DOCKET NUMBER

DATE 07/10/2015
SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 1415 Fairmont Avenue, Philadelphia, PA 19130

Address of Defendant: One Comcast Center, Philadelphia, PA 19103

Place of Accident, Incident or Transaction: (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock? (Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes No X

Does this case involve multidistrict litigation possibilities? Yes No X

RELATED CASE, IF ANY:

Case Number: Judge Date Terminated:

Civil cases are deemed related when yes is answered to any of the following questions:

- 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes No X
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes No X
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes No X
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes No X

CIVIL: (Place in ONE CATEGORY ONLY)

A. Federal Question Cases:

- 1. Indemnity Contract, Marine Contract, and All Other Contracts
2. FELA
3. Jones Act-Personal Injury
4. Antitrust
5. Patent
6. Labor-Management Relations
7. Civil Rights
8. Habeas Corpus
9. Securities Act(s) Cases
10. Social Security Review Cases
11. All other Federal Question Cases (Please specify) 47 U.S.C. § 227 et seq.

B. Diversity Jurisdiction Cases:

- 1. Insurance Contract and Other Contracts
2. Airplane Personal Injury
3. Assault, Defamation
4. Marine Personal Injury
5. Motor Vehicle Personal Injury
6. Other Personal Injury (Please specify)
7. Products Liability
8. Products Liability — Asbestos
9. All other Diversity Cases (Please specify)

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, CRAIG THOR KIMMEL, counsel of record do hereby certify: Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs; Relief other than monetary damages is sought.

DATE: 07-10-15 Attorney-at-Law 57100 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07-10-15 Attorney-at-Law 57100 Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM


KIA ELDER	:	CIVIL ACTION
	:	
v.	:	
	:	
COMCAST CORPORATION	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

07-10-15
Date


Attorney-at-law

Plaintiff, Kia Elder
Attorney for

215-540-8888 x 116
Telephone

877-788-2864
FAX Number

kimmel@creditlaw.com
E-Mail Address

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

**UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

KIA ELDER,)
)
Plaintiff)
) **Case No.:**
v.)
) **COMPLAINT AND DEMAND FOR**
COMCAST CORPORATION,) **JURY TRIAL**
)
Defendant) **(Telephone Consumer Protection**
) **Act)**

COMPLAINT

KIA ELDER (“Plaintiff”), by and through her attorneys, KIMMEL & SILVERMAN, P.C., alleges the following against COMCAST CORPORATION (“Defendant”):

INTRODUCTION

1. Plaintiff’s Complaint is based on the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*

JURISDICTION AND VENUE

2. Jurisdiction of this Court arises pursuant to 28 U.S.C. § 1331. See Mims v. Arrow Fin. Services, LLC, 132 S. Ct. 740, 747, 181 L. Ed. 2d 881 (2012).

3. Defendant conducts business in the Commonwealth of Pennsylvania and as such, personal jurisdiction is established.

1 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Philadelphia, Pennsylvania
4 19130.

5 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. § 153(39).

6 7. Defendant is a corporation with its headquarters located at One
7 Comcast Center, Philadelphia, Pennsylvania 19103.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C.
9 §153(39).

10 9. Defendant acted through its agents, employees, officers, members,
11 directors, heirs, successors, assigns, principals, trustees, sureties, subrogees,
12 representatives, and insurers.

13 **FACTUAL ALLEGATIONS**

14 10. Plaintiff has a cellular telephone number that she has had for more
15 than one year.

16 11. Plaintiff has only used this number as a cellular telephone number.

17 12. The phone number has been assigned to a cellular telephone service
18 for which Plaintiff incurs a charge for incoming calls.

19 13. Beginning in late September 2014, and continuing through June
20 2015, Defendant repeatedly called Plaintiff on her cellular telephone.
21
22
23
24
25

1 14. When contacting Plaintiff on her cellular telephone, Defendant used
2 an automatic telephone dialing system and automated and/or pre-recorded
3 messages.

4 15. Defendant's automated messages stated: "We're calling from
5 Comcast," before the call would be transferred to a live representative.
6

7 16. Defendant's telephone calls were not made for "emergency
8 purposes."
9

10 17. In late September 2014, Plaintiff spoke with a male collector of
11 Defendant who informed Plaintiff he was calling to collect on a \$527.00 cable
12 television bill.

13 18. Plaintiff informed Defendant that she had paid that debt in 2011 and
14 told the collector that she wanted Comcast to stop calling her on her cellular
15 telephone.
16

17 19. Defendant acknowledged Plaintiff's instructions to stop calling her
18 cellular telephone but the calls did not stop.
19

20 20. Defendant continued to call Plaintiff on her cellular telephone, and at
21 this point it was entirely without her express prior consent.

22 21. From late September 2014, Defendant placed cellular calls to Plaintiff
23 an average of once or twice each day.
24

25 22. Calls continued at least through June 18, 2015.

1 23. None of the phone calls were made for “emergency purposes.”

2 **DEFENDANT VIOLATED THE**
3 **TELEPHONE CONSUMER PROTECTION ACT**

4 24. Plaintiff incorporates the forgoing paragraphs as though the same
5 were set forth at length herein.

6 25. Defendant initiated multiple automated telephone calls to Plaintiff’s
7 cellular telephone using a prerecorded voice and without her express prior consent.
8

9 26. Defendant initiated these automated calls to Plaintiff using an
10 automatic telephone dialing system.

11 27. Defendant’s calls to Plaintiff were not made for emergency purposes.

12 28. Defendant’s calls to Plaintiff, in and after September 2014, were not
13 made with Plaintiff’s prior express consent.
14

15 29. Defendant’s acts as described above were done with malicious,
16 intentional, willful, reckless, wanton and negligent disregard for Plaintiff’s rights
17 under the law and with the purpose of harassing Plaintiff.
18

19 30. The acts and/or omissions of Defendant were done unfairly,
20 unlawfully, intentionally, deceptively and fraudulently and absent bona fide error,
21 lawful right, legal defense, legal justification or legal excuse.
22

23 31. As a result of the above violations of the TCPA, Plaintiff has suffered
24 the losses and damages as set forth above entitling Plaintiff to an award of
25 statutory, actual and trebles damages.

PRAYER FOR RELIEF

1
2 WHEREFORE, Plaintiff, KIA ELDER, respectfully prays for a judgment as
3 follows:

- 4 a. All actual damages suffered pursuant to 47 U.S.C. §
5 227(b)(3)(A);
6
7 b. Statutory damages of \$500.00 per violative telephone call
8 pursuant to 47 U.S.C. § 227(b)(3)(B);
9
10 c. Treble damages of \$1,500.00 per violative telephone call
11 pursuant to 47 U.S.C. §227(b)(3);
12
13 d. Injunctive relief pursuant to 47 U.S.C. § 227(b)(3); and
14
15 e. Any other relief deemed appropriate by this Honorable Court.


DEMAND FOR JURY TRIAL

16 PLEASE TAKE NOTICE that Plaintiff KIA ELDER, demands a jury trial
17 in this case.
18
19
20
21
22
23
24
25

RESPECTFULLY SUBMITTED,

1
2 DATED: 07/10/15

KIMMEL & SILVERMAN, P.C.

3
4 By:  _____

5 CRAIG THOR KIMMEL

6 Attorney ID # 57100

7 Kimmel & Silverman, P.C.

8 30 E. Butler Pike

9 Ambler, PA 19002

10 Phone: (215) 540-8888

11 Fax: (877) 788-2864

12 Email: kimmel@creditlaw.com