



**IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION**

MARY KOVACH and LARA)
BELLISSIMO, on behalf of themselves)
and other persons similarly situated,)
)
Plaintiffs,)
)
v.)
)
COMPASS BANK D/B/A BBVA)
COMPASS, an Alabama banking)
corporation,)
)
Defendant.)

Case No. 01-cv-2018-902504-BBG

FIRST AMENDED CLASS ACTION COMPLAINT

COME NOW Plaintiffs Mary Kovach and Lara Bellissimo, individually and on behalf of other similarly situated individuals, and bring this First Amended Class Action Complaint against Defendant Compass Bank d/b/a BBVA Compass (“BBVA”) to stop Defendant’s practice of placing unauthorized telephone calls to consumers, 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.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Kovach is a resident and citizen of the state of California.
2. Plaintiff Bellissimo is a resident and citizen of the state of Illinois.
3. Defendant Compass Bank operates banks throughout the United States as a subsidiary of BBVA Compass Bancshares, Inc., and is incorporated in the state of Alabama, maintains its headquarters in Jefferson County, and was doing business in Jefferson County, Alabama at all times material to this Complaint.

4. This Court has subject matter jurisdiction over the claims alleged in this lawsuit and the parties thereto.

5. Venue is proper in this Court pursuant to *Ala. Code* § 6-3-7(a)(2) because Defendant's headquarters are located in Jefferson County.

FACTUAL ALLEGATIONS

6. BBVA is a nationwide provider of banking services such as checking and savings accounts.

7. As an ordinary business practice, BBVA collects the telephone numbers of its customers following the opening of an account at its banks. Such numbers are then used going forward as part of BBVA's automated calling operation for collection and solicitation purposes.

8. Upon information and belief, these automated calls, including the calls made to the cellular telephone subscribed to by Plaintiff Kovach and used by Plaintiff Bellissimo, were placed *en masse* using both "predictive dialing" technology, which automatically places calls without human intervention until the called party answers the call, at which time such automatic dialer attempts to connect the called party with a human representative, as well as prerecorded or artificial voice messages, which simply relay a message to the called party, even if the called party, as is the case here, was not the intended recipient of the call.

9. In an attempt to reduce costs associated with maintaining its automated calling operation, BBVA spurns procedures necessary to confirm that the telephone numbers to which BBVA places robocalls actually belong to the customers who have supposedly provided them to Defendant.

10. Consequently, many of the telephone numbers BBVA receives or attempts to reach in connection with its automated debt collection calling operation are inaccurate, or have become

inaccurate, and result in BBVA routinely placing unauthorized telephone calls using a prerecorded or artificial voice (“robocalls”) to individuals who never provided consent to be called by Defendant.

11. In addition to being an aggravating invasion of privacy, unsolicited automated telephone calls can actually cost recipients money because called parties such as Plaintiffs must frequently pay their cellular telephone service providers for the calls they receive or incur a usage deduction to their cell phone plan, regardless of whether the call is authorized.

12. On multiple occasions during the relevant time period, the cellular telephone maintained by Plaintiffs received calls placed by or on behalf of Defendant including from phone number (800) 562-4172, a phone number known to be associated with Defendant’s automated calling operation, attempting to collect a debt belonging to an existing or former customer of Defendant.

13. Plaintiffs are not now, nor ever have been, customers of Defendant.

14. Such unauthorized robocalls placed by Defendant invade the privacy of recipients, force the expenditure of time investigating their source, and repeatedly interfere with the use of cellular telephones by their lawful subscribers and authorized users, including Plaintiffs.

15. At no time did Plaintiffs provide Defendant with consent to place any telephone calls, including any calls made through an automatic telephone dialing system or using a prerecorded or artificial voice, to any cellular telephone.

CLASS ALLEGATIONS

16. Plaintiffs bring this action pursuant to *Ala. Code* § 6-5-640 and Ala. R. Civ. P. 23 on behalf of themselves and a nationwide class (the “Class”) defined as follows:

All persons in the United States who were the subscriber or authorized user of a cellular telephone which received one or more collection calls from

Compass Bank during the applicable limitations period to the present date (a) where the call was directed to a phone number assigned to a cellular telephone service, (b) whose phone number appears in the records of Compass Bank, (c) who were not a Compass Bank customer who provided such phone number to Compass Bank, and (d) which calls were placed using an automatic telephone dialing system or artificial or prerecorded voice technology.

Excluded from the Class are: (1) governmental agencies, entities, or judicial officers.

17. Upon information and belief, there are thousands of members of the Class such that joinder of all members is impracticable.

18. There are many questions of law and fact common to the claims of Plaintiffs and the other members of the Class, and, pursuant to Ala. R. Civ. P. 23(b)(3), those questions predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not limited to, the following:

- a. Whether BBVA made calls using an automatic telephone dialing system and/or featuring a prerecorded or artificial voice message;
- b. Whether BBVA made automated calls using an automatic telephone dialing system and/or featuring a prerecorded or artificial voice message to individuals who did not provide prior express consent to BBVA to receive such calls;
- c. Whether the calls made by BBVA using an automatic telephone dialing system and/or featuring a prerecorded or artificial voice message violated the called parties' respective rights to privacy;
- d. Whether BBVA's conduct violates the TCPA; and
- e. Whether Plaintiffs and the other members of the Class are entitled to damages and injunctive relief.

19. The claims of Plaintiffs are typical of the claims of the other members of the Class. The dispositive issues with respect to Plaintiffs' claims are the same as the issues governing the claims of the other members of the Class, and Plaintiffs are not subject to any unique defenses. Plaintiffs and the other members of the Class have all suffered harm and damages as a result of BBVA's unlawful and wrongful conduct in violation of the TCPA.

20. Plaintiffs will fairly and adequately represent and protect the interests of the other members of the Class. Plaintiffs have retained counsel with substantial experience in prosecuting complex litigation and class actions. Plaintiffs and their counsel are committed to vigorously prosecuting this action on behalf of the other members of the Class, and have the financial resources to do so. Plaintiffs nor their counsel have any interests adverse to those of the other members of the Class.

21. Pursuant to Ala. R. Civ. P. 23(b)(1)(A), the class treatment of common questions of law and fact is superior to multiple individual actions or piecemeal litigation in that it avoids the risk of inconsistent adjudications and incompatible standards of conduct for the Defendant.

22. Pursuant to Ala. R. Civ. P. 23(b)(2), BBVA has acted and failed to act on grounds generally applicable to the Plaintiffs and the other members of the Class, requiring the Court's imposition of uniform relief to ensure compatible standards of conduct toward the members of the Class, and making injunctive or corresponding declaratory relief appropriate for the Class as a whole.

COUNT I

Violation of the Telephone Consumer Protection Act (47 U.S.C. § 227, et seq.) on behalf of the Class

23. Plaintiffs incorporate by reference the foregoing allegations as if fully set forth herein.

24. BBVA made unauthorized and unsolicited telephone calls using an automatic telephone dialing system and/or featuring a prerecorded or artificial voice message without prior express consent to the cellular telephone numbers of Plaintiffs and the other members of the Class.

25. BBVA has, therefore, violated the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

26. As a result of BBVA's illegal conduct, the members of the Class have had their privacy rights violated, have suffered statutory and actual damages, and, under 47 U.S.C. § 227(b)(3)(B), are each entitled, inter alia, to a minimum of \$500.00 in damages for each such violation of the TCPA.

27. To the extent the Court should determine that BBVA's conduct was willful and knowing, the Court may, pursuant to §227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiffs and the other members of the Class.

WHEREFORE, Plaintiffs, on behalf of themselves and the proposed Class, pray for the following relief:

- a. An order certifying the Class as defined above, appointing Plaintiffs as class representatives and the undersigned as class counsel;
- b. An award of statutory damages;
- c. An injunction requiring Defendant to cease all unauthorized automated telephone activities;
- d. An award of reasonable attorney's fees and expenses of litigation; and
- e. Such further and other relief as the Court deems just or equitable.

/s/ F. Jerome Tapley _____
 F. JEROME TAPLEY (TAP006)
 HIRLYE R. "RYAN" LUTZ, III (LUT005)
 ADAM W. PITTMAN (PIT042)
Attorneys for Plaintiffs

OF COUNSEL:

CORY WATSON, P.C.

2131 Magnolia Avenue South
Birmingham, AL 35205
Tel: (205) 328-2200
Fax: (205) 324-7896
jtapley@corywatson.com
rlutz@corywatson.com
apittman@corywatson.com

Scott A. Morgan (*Pro Hac Vice*)

MORGAN LAW FIRM, LTD.

55 West Wacker Drive, 9th Fl.
Chicago, IL 60601
Tel: (312) 327-3386
Fax: (888) 396-2478
smorgan@smorgan-law.com

Myles McGuire (*Pro Hac Vice*)

Evan M. Meyers (*Pro Hac Vice*)

Eugene Y. Turin (*Pro Hac Vice*)

MCGUIRE LAW, P.C.

55 West Wacker Drive, 9th Fl.
Chicago, IL 60601
Tel: (312) 893-7002
Fax: (312) 275-7895
mmcguire@mcgpc.com
emeyers@mcgpc.com
eturin@mcgpc.com

PLAINTIFFS HEREBY DEMAND TRIAL BY A STRUCK JURY

/s/ F. Jerome Tapley

F. JEROME TAPLEY (TAP006)

HIRLYE R. "RYAN" LUTZ, III (LUT005)

ADAM W. PITTMAN (PIT042)

Attorneys for Plaintiffs

PLAINTIFFS' ADDRESSES

Mary Kovach
Lara Bellissimo
c/o CORY WATSON, P.C.
2131 Magnolia Avenue South
Birmingham, AL 35205