

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

WILLIAM QUINN, individually, and )  
on behalf of all others similarly situated, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
JK BUICK GMC, INC. d/b/a BILL KAY )  
AUTO GROUP, )  
 )  
 )  
 )  
Defendant. )

Case No.: 23 CV 447

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

COMES NOW Plaintiff William Quinn, individually, and on behalf of all others similarly situated, and for his Class Action Complaint against Defendant Bill Kay Auto Group, states:

**BACKGROUND, PARTIES, JURISDICTION AND VENUE**

1. Plaintiff William Quinn (“Quinn”) brings this case to protect the privacy rights of himself and a class of similarly situated people who were sent text messages on their phones by Defendant JK Buick GMC, Inc. d/b/a Bill Kay Auto Group (“Bill Kay Auto Group”). Bill Kay Auto Group repeatedly sent text messages to Quinn and the putative class members after Quinn and the putative class members expressly requested that Bill Kay Auto Group stop sending them text messages.

2. In the early 1990s, Congress enacted the Telephone Consumer Protection Act (“TCPA”) to protect consumers’ privacy rights, namely, the right to be left alone from

unwanted telemarketing calls. A leading sponsor of the TCPA described unwanted telemarketing calls as “the scourge of modern civilization.” 137 Cong. Rec. 30821 (1991).

3. The TCPA affords special protections for people who registered their request to be placed on a company’s internal do not call list. Specifically, the TCPA provides that each person who receives more than one call on their cell phone after requesting to be placed on the company’s internal do not call list is entitled to recover a penalty of \$500 per call, and up to \$1,500 per call if the TCPA is willfully or knowingly violated.

4. The problem with receiving unwanted telemarketing calls is a problem that most people in this country, like Quinn, frequently face. For example, in 2022 alone, approximately 36.8 billion robocalls were placed in the United States. RobocallIndex.com, YouMail Robocall Index, <https://robocallindex.com/history/time> (last visited January 18, 2023). The private right of enforcement of the TCPA is critical to stopping the proliferation of these unwanted telemarketing calls. For example, while the Federal Communications Commission levied over \$200 million in penalties against telemarketers between 2015 and 2018, it collected less than \$7,000 of that amount. *See Sarah Krouse, The FCC Has Fined Robocallers \$208 Million. It’s Collected \$6,790*, THE WALL STREET JOURNAL, March 28, 2019, <https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803>.

5. Quinn is an individual who resides in and is a citizen of the State of Illinois.

6. Quinn brings this action on behalf of himself and all others similarly situated.

7. Bill Kay Auto Group is corporation organized under the laws of Illinois, is headquartered in Illinois, and has been in good standing to transact business in Illinois at all times relevant to this Complaint.

8. Bill Kay Auto Group owns and operates an automobile multiple dealerships in Illinois.

9. Bill Kay Auto Group owns and operates dealerships such as Bill Kay Chevrolet, Bill Kay Corvettes & Classics, Bill Kay Buick GMC, Bill Kay Honda, Bill Kay Nissan and Bill Kay Ford.

10. Bill Kay Auto Group markets its products and services, in part, through sending text message advertisements to consumers' cell phones.

11. Quinn is the owner of a cell phone. His phone number is 630-XXX-2137.

12. Quinn's phone is a residential line that is used primarily for personal purposes, namely, to communicate with friends and family members.

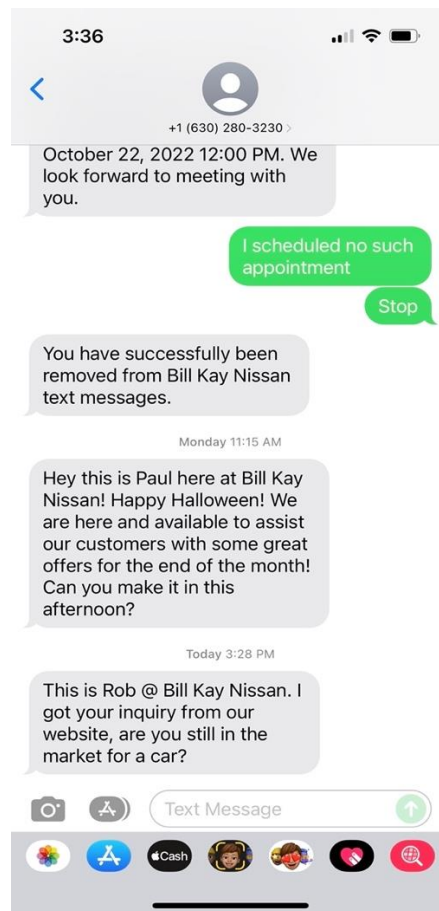
13. Quinn's cell phone account is held in his personal name.

14. On October 22, 2022, Quinn received a text message from Bill Kay Auto Group, stating, "Will, this is Robert Yousef with Bill Kay's Downers Groves Nissan reminding you of our appointment on Saturday, October 22, 2022 12:00 P.M. We look forward to meeting with you."

15. On October 22, 2022, Quinn replied to the text message, "I scheduled no such appointment. Stop."

16. Bill Kay Auto Group responded to Quinn’s request to stop receiving text messages on the same day, stating, “You have successfully been removed from Bill Kay Nissan text messages.”

17. Despite confirming it would no longer send Quinn text messages, Bill Kay Auto Group sent Quinn an additional two marketing text messages on October 31, 2022 and November 3, 2022, as follows:



18. Quinn never made an inquiry on Bill Kay Group’s website after the Bill Kay Group confirmed they would no longer send text messages to Quinn.

19. Bill Kay Group’s conduct violated the privacy rights of Quinn and the

putative class members, as they were subjected to annoying and harassing text messages. Bill Kay Auto Group's texts intruded upon the rights of Quinn and the putative class members to be free from invasion of their interest in seclusion.

20. Bill Kay Auto Group's conduct caused Quinn and the putative class members to waste time addressing and/or otherwise responding to the unwanted text messages.

21. On information and belief, Bill Kay Auto Group sent text messages to Quinn and the putative class members for the purpose of selling its products and services.

### **Class Allegations**

22. Pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), Quinn brings this lawsuit as a class action on behalf of himself and all others similarly situated. This action satisfies the requirements of Rule 23.

23. Quinn seeks to represent the following class:

All persons in the United States who from four years prior to the filing of this action through class certification to whom: (1) Bill Kay Auto Group sent text messages marketing its products, (2) Bill Kay Auto Group sent more than one text message to the person in a twelve-month period, and, (3) Bill Kay Auto Group sent such text messages after the person requested that Bill Kay Auto Group stop sending them text messages.

24. Quinn reserves the right to add administrative subclasses, or to amend the definition of the proposed class, during the lawsuit proceedings.

25. The members of the proposed classes are so numerous that joinder of all members is impracticable. Quinn reasonably believes that hundreds or thousands of people have been harmed by Bill Kay Auto Group's actions. The phone numbers of the members

of the proposed class are readily identifiable through records available to Bill Kay Auto Group.

26. Most members of the proposed class have suffered damages in an amount such that it would make filing separate lawsuits by individual members economically infeasible.

27. On information and belief, Bill Kay Auto Group has texted and continues to text people who have requested that Bill Kay Auto Group stop calling them, i.e., to be placed on Bill Kay Auto Group's internal do not call list. It is reasonable to expect that Bill Kay Auto Group will continue to send such text messages absent this lawsuit.

28. Common questions of law and fact exist as to all members of the proposed class and predominate over any questions affecting only individual members. The questions of law and fact common to the proposed class include, but are not limited to:

a. Whether Bill Kay Auto Group sent text messages to Quinn and the putative class members after they requested that Bill Kay Auto Group no longer send them text messages;

b. Whether Bill Kay Auto Group's conduct violates 47 U.S.C. § 227(c);

c. Whether Bill Kay Auto Group's conduct violates the rules and regulations implementing the TCPA; and,

d. Whether Quinn and the putative class members are entitled to increased damages for each violation based on the willfulness of Bill Kay Auto Group's conduct.

29. Quinn's claims are typical of the claims of the proposed class members because his claims arise from the same practice that gives rise to the claims of the members of the proposed class and is based on the same legal theories.

30. Quinn and his counsel will fairly and adequately protect the interests of the members of the proposed class. Quinn's interests do not conflict with the interests of the proposed class he seeks to represent. Quinn has retained lawyers who are competent and experienced in class action litigation, including TCPA litigation and consumer law.

31. Quinn's counsel will vigorously litigate this case as a class action, and Quinn and his counsel are aware of their responsibilities to the putative members of the class and will discharge those duties.

32. A class action is superior to all individual lawsuits for this controversy. Joinder of all proposed members of the proposed class in one action is impracticable if not impossible and prosecuting hundreds or thousands of individual actions is not feasible. The size of the individual claims is likely not large enough to justify filing a separate action for each claim. For many, if not most, members of the proposed class, a class action is the only procedural mechanism that will allow recovery. Even if members of the proposed class had the resources to pursue individual litigation, that method would be unduly burdensome to the courts. Individual litigation could also result in inconsistent adjudications.

33. In contrast, a class action is superior in that it will benefit the court and litigating parties through efficiency, economy of scale and unitary adjudication resulting from supervision of the litigation by a single court.

34. Questions of law and fact, particularly the propriety of sending text messages to persons who requested that Bill Kay Auto Group no longer text them, *i.e.*, to place them on Bill Kay Auto Group's internal do not call list, predominate over questions affecting only individual members.

35. Bill Kay Auto Group has acted or refused to act on grounds that apply generally to the class, making final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole.

**Count I - Violations of the Telephone Consumer Protection Act ("TCPA"),  
47 U.S.C. § 227 *et seq.***

36. Quinn incorporates by reference the allegations of the previous paragraphs as if fully stated in this Count.

37. The TCPA provides that “a person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection” may recover \$500 for each violation, and up to \$1,500 for each violation, if the violation is determined to be willful. *See* 47 U.S.C. § 227(c)(5).

38. The regulations prescribed under Section 227(c) require companies like Bill Kay Auto Group, who engage in telemarketing to institute “procedures for maintaining a list of persons who request not to receive telemarketing calls on or behalf of that person or entity.” *See* 47 C.F.R. § 64.1200(d).

39. These procedures must meet several minimum standards, including, but not limited to:



- (1) **Written policy.** Persons or entities making calls for telemarketing purposes must have a written policy, available upon demand, for maintaining a do-not-call list.
- (2) **Training of personnel engaged in telemarketing.** Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.
- (3) **Recording, disclosure of do-not-call requests.** If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber's name, if provided, and telephone number on the do-not-call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the person or entity on whose behalf the telemarketing call is made, the person or entity on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request. A person or entity making a call for telemarketing purposes must obtain a consumer's prior express permission to share or forward the consumer's request not to be called to a party other than the person or entity on whose behalf a telemarketing call is made or an affiliated entity.
- (4) **Identification of sellers and telemarketers.** A person or entity making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the person or entity on whose behalf the call is being made, and a telephone number or address at which the person or entity may be contacted. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.
- (5) **Affiliated persons or entities.** In the absence of a specific request by the subscriber to the contrary, a residential subscriber's do-not-call request shall apply to the particular business entity making the call (or on whose behalf a call is made), and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

**(6) Maintenance of do-not-call lists.** A person or entity making calls for telemarketing purposes must maintain a record of a consumer's request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.

*See* 47 C.F.R. § 64.1200(d)(1)-(6).

40. Bill Kay Auto Group failed to maintain and/or implement these minimum standards by repeatedly sending text messages to Quinn and the putative class members after Quinn and the putative class members requested that Bill Kay Auto Group stop sending them text messages.

41. In addition, the TCPA allows the Court to enjoin Bill Kay Auto Group's violations of the TCPA's regulations prohibiting calls to phone numbers that should have been placed on Bill Kay Auto Group's internal do not call list. *See* 47 U.S.C. §§ 227(c)(5)(A).

42. By sending text messages to the phones of Quinn and the putative class members after their numbers should have been placed on Bill Kay Auto Group's internal do not call list, Bill Kay Auto Group violated the TCPA, including, but not limited to, 47 U.S.C. § 227(c) and the TCPA's corresponding regulations.

43. Bill Kay Auto Group knew or should have known that Quinn and the putative class members did not wish to receive text messages as such persons expressly advised Bill Kay Auto Group that they did not wish to receive text messages from Bill Kay Auto Group.

44. Quinn and the putative class members are entitled to damages of \$500.00 per violation for each text message sent by Bill Kay Auto Group in violation of the TCPA and up to \$1,500.00 per violation if the Court finds that Bill Kay Auto Group willfully violated the TCPA.

### **Demand for Judgment**

WHEREFORE Plaintiff William Quinn, individually, and on behalf of all others similarly situated, requests the Court grant the following relief:

a. Enter an order against Defendant Bill Kay Auto Group, LLC pursuant to Federal Rule of Civil Procedure 23(a), (b)(2) and (b)(3), certifying this action as a class action and appointing Quinn as the class representative;

b. Enter an order appointing Butsch Roberts & Associates LLC and the Law Office of James X. Bormes, P.C. as counsel for the class;

c. Enter judgment in favor of Quinn and the putative class for all damages available under the TCPA, including statutory damages of up to \$500 per violation of the TCPA, or up to \$1,500 per violation of the TCPA if Bill Kay Auto Group willfully violated the TCPA;

d. Enter a judgment in favor of Quinn and the putative class that enjoins Bill Kay Auto Group from violating the TCPA's regulations prohibiting Bill Kay Auto Group from sending text messages to persons who have requested that Bill Kay Auto Group stop texting them;

e. Award Quinn and the class all expenses of this action, and require that Bill Kay Auto Group pay the costs and expenses of class notice and administration; and,

f. Award Quinn and the class such further and other relief the Court deems just and appropriate.

**DEMAND FOR JURY TRIAL**

Please take notice that Plaintiff William Quinn demands a jury trial in this case.

Dated: January 24, 2023

WILLIAM QUINN, individually and  
on behalf of all others similarly situated,

/s/ James X. Bormes

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**CIVIL COVER SHEET**

The 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 is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p><b>(a) PLAINTIFFS</b></p>  <p><b>(b)</b> County of Residence of First Listed Plaintiff _____ (EXCEPT IN U.S. PLAINTIFF CASES)</p>  <p><b>(c)</b> Attorney's (Firm Name, Address, and Telephone Number)</p>	<p><b>DEFENDANTS</b></p>  <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p>  <p>Attorneys (If Known)</p>
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**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff	3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant	4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated <i>or</i> Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated <i>and</i> Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment & Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (excl. vet.) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	<table style="width:100%;"> <tr> <td style="width:50%;"> <b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel &amp; Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Inj.                 </td> <td style="width:50%;"> <b>PERSONAL INJURY</b> 362 Personal Injury— Med. Malpractice 365 Personal Injury — Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability                 </td> </tr> </table>	<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Inj.	<b>PERSONAL INJURY</b> 362 Personal Injury— Med. Malpractice 365 Personal Injury — Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability	610 Agriculture 620 Other Food & Drug 625 Drug Related Seizure of Property 21 USC 881 630 Liquor Laws 640 R.R. & Truck 650 Airline Regs. 660 Occupational Safety/Health 690 Other	422 Appeal 28 USC 158 423 Withdrawal 28 USC 157	400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Corrupt Organizations 480 Consumer Credit 490 Cable/Satellite TV 810 Selective Service 850 Security/Commodity/Exch. 875 Customer Challenge 12 USC 3410 891 Agricultural Acts 892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of Information Act 900 Appeal of Fee Determination Under Equal Access to Justice 950 Constitutionality of State Statutes 890 Other Statutory Actions
<b>PERSONAL INJURY</b> 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Inj.	<b>PERSONAL INJURY</b> 362 Personal Injury— Med. Malpractice 365 Personal Injury — Product Liability 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability					
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>LABOR</b>	<b>PROPERTY RIGHTS</b>			
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	441 Voting 442 Employment 443 Housing/Accommodations 444 Welfare 445 ADA—Employment 446 ADA—Other 440 Other Civil Rights	710 Fair Labor Standards Act 720 Labor/Mgmt. Relations 730 Labor/Mgmt. Reporting & Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation 791 Empl. Ret. Inc. Security Act	820 Copyrights 830 Patent 840 Trademark <b>SOCIAL SECURITY</b> 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS—Third Party 26 USC 7609			

**V. ORIGIN** (PLACE AN "X" IN ONE BOX ONLY)

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	7 Appeal to District Judge from Magistrate Judgment
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**VI. CAUSE OF ACTION** (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)

**VII. PREVIOUS BANKRUPTCY MATTERS** (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter perviously adjudicated by a judge of this Court. Use a separate attachment if necessary)

**VIII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23  DEMAND \$ \_\_\_\_\_ CHECK YES only if demanded in complaint: **JURY DEMAND:** Yes  No

**IX. This case** is not a refile of a previously dismissed action.  is a refile of case number \_\_\_\_\_, previously dismissed by Judge \_\_\_\_\_

DATE \_\_\_\_\_ SIGNATURE OF ATTORNEY OF RECORD \_\_\_\_\_