

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

CLUB TEXTING, INC. d/b/a
EZ TEXTING, INC.

Plaintiff,

v.

T-MOBILE USA, INC.

Defendant.

Civil Action No. _____

**DECLARATION OF SHAHRIYAR NEMAN
IN SUPPORT OF ORDER TO SHOW CAUSE**

I, Shahriyar (“Shane”) Neman, declare pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of Club Texting, Inc. d/b/a EZ Texting, Inc. (“EZ Texting”). I submit this Declaration pursuant to Fed. R. Civ. P. 65(b) and Local Rule 6.1(d) in support of Plaintiff’s application for a temporary restraining order and an Order to Show Cause for a preliminary injunction enjoining Defendant T-Mobile USA, Inc. (“T-Mobile”) from blocking text messages to and from EZ Texting.

2. EZ Texting filed this action based on T-Mobile’s unlawful blocking of its customers’ messages being sent to or received by EZ Texting’s short code 313131, a practice that T-Mobile began on or about Friday, September 10, 2010 and which has continued unabated despite demand by EZ Texting that T-Mobile stop this unlawful action.

3. EZ Texting is being irreparably damaged in its business because of the blocking by T-Mobile. The ability to exchange text message calls with all cell phone users is vital to EZ Texting’s business. The thousands of EZ Texting’s customers – which include both for-profit businesses and non-profit organizations – that rely on EZ Texting’s short code (which is akin to a

telephone number for text messages) cannot be reached by T-Mobile's cell phone users, nor can those businesses and non-profits reach T-Mobile's cell phone users.

A. EZ Texting's Business

4. EZ Texting was formed in 2006 to provide mobile marketing services to businesses and non-profits.

5. EZ Texting provides and implements interactive text messaging promotions, and its business model depends on "short codes" being connected to the nation's various wireless service providers, including T-Mobile. EZ Texting's short code allows cell phone users to exchange text messages with EZ Texting's customers, which, again, include both for-profit businesses and non-profit organizations.

6. EZ Texting's short code is a six digit telephone number (313131), which allows cell phone users to send text messages to EZ Texting. EZ Texting also uses the short code to contact cell phone users who have expressed an interest in EZ Texting's marketing by "opting in" to EZ Texting's short code. In other words, EZ Texting does not send text messages to cell phone users unless they have asked to receive them. (And, a customer can always change his or her mind and stop receiving such messages upon request.)

7. EZ Texting provides what is known as "group" text messaging. EZ Texting's short code is shared by a variety of businesses and non-profits to communicate with cell phone users. EZ Texting offers a less expensive mobile-marketing alternative to businesses and non-profits who cannot afford to obtain or will not derive sufficient value from owning their own short code.

8. A shared short code is common in the mobile marketing industry, and used by many other mobile marketing companies similar to EZ Texting, companies with which EZ Texting competes.

9. The shared short code allows a variety of businesses and non-profits to use EZ Texting's software to market their products and services to existing and potential customers with text messages. For example, a party rental company may advertise to a potential customer to text "PARTY" to 313131 to receive information about the rental services provided. A church customer likewise could send its services schedule to a cell phone user who texted "CHURCH" to 313131.

10. Again, cell phone users only receive text message calls from EZ Texting's customers after they affirmatively request that such text messages be sent to them. Moreover, consumers can stop receiving these messages whenever they want. EZ Texting does not send unwanted text messages from any business or non-profit organization.

11. These businesses and non-profits enter into contracts with EZ Texting, who helps them design and monitor their marketing campaigns to ensure they comply with the myriad wireless service providers' guidelines and rules. EZ Texting has created software which allows the businesses and non-profits to set up the text messages they will send in response to a cell phone user's text message to them.

12. EZ Texting has a rigorous screening process to ensure that the businesses and non-profits that use EZ Texting to send text messages are doing so in compliance with all applicable laws and regulations.

B. The Wireless Service Providers

13. EZ Texting's business, like its competitors', depends on being connected to the nation's wireless service providers, so that the businesses and non-profits can exchange text messages with the wireless service providers' customers.

14. The wireless service providers, such as T-Mobile, do not link directly with short code holders like EZ Texting. Instead, the wireless carriers' agents, known as "aggregators," are usually connected to companies like EZ Texting. Thus, EZ Texting's network is thus indirectly interconnected with T-Mobile for purposes of exchanging text message calls.

15. The aggregator at issue in this case for T-Mobile is Open Market, Inc. ("Open Market"). EZ Texting connects through a company called 4INFO, Inc. ("4INFO") who then connects to Open Market.

16. In other words, EZ Texting is connected to 4INFO who connects to Open Market who then connects to T-Mobile.

17. EZ Texting's network is thus indirectly interconnected with T-Mobile.

18. EZ Texting has been indirectly connected to T-Mobile for over 3 years. T-Mobile has never blocked EZ Texting before now.

C. Unlawful Blocking By T-Mobile

19. On or about Thursday, September 9, 2010, EZ Texting learned through industry contacts that unnamed wireless providers had learned of a business using EZ Texting's short code that they did not approve of.

20. This EZ Texting short-code user's website of which these unnamed wireless providers reportedly did not approve, <http://www.legalmarijuanadispensary.com> (the "website"), contains information regarding accessing legal medical marijuana in California and other states

where it is legal. The website advertised that users who sought relevant information could receive such information by using EZ Texting's short codes. Cell phone users, including T-Mobile's, have been receiving such information from this particular EZ Texting customer via short code 313131 without incident since approximately June 2009.

21. Because medical marijuana is legal in California and the other states identified on the website, and the website did not advocate illegal drug use or medical marijuana use in places where it was not legal, there is nothing illegal or objectionable about this website using text message calls to communicate with interested parties.

22. The website also followed the same "opt-in" requirements to send text messages as every other business. Text messages concerning this website were only sent to cell phone users who specifically requested information from the website.

23. On or about Thursday, September 9, 2010, EZ Texting learned from Open Market and 4INFO that unnamed wireless service providers found the website objectionable. EZ Texting also learned that those unnamed wireless service providers planned on blocking EZ Texting's customer's text messages based on the website, well over a year after cell phone users had been communicating with this EZ Texting customer without incident.

24. Although the website is lawful and unobjectionable, to avoid wholesale injury to all of EZ Texting's customers and EZ Texting's relationships with its customers, EZ Texting immediately had the website remove EZ Texting's short code and related webpage to avoid being blocked by any wireless service provider. EZ Texting also suspended the customer in question's use of EZ Texting's 313131 short code.

25. On or about Thursday, September 9, 2010, EZ Texting communicated to Open Market and 4INFO that the website, at EZ Texting's request, no longer advertised EZ Texting's

short code, and that EZ Texting was no longer serving this customer's messages to or from the 313131 short code. Upon Information and belief, Open Market or 4INFO or both contacted T-Mobile and alerted T-Mobile that the website had been taken down. This all occurred on or about Thursday, September 9, 2010, even before T-Mobile began blocking.

26. Starting on or about Friday, September 10, 2010, however, T-Mobile began illegally blocking its customers from sending or receiving text messages to or from *all* of EZ Texting's customers by blocking all messages sent to or received from EZ Texting's short code, 313131.

27. On or about Friday, September 10, 2010, EZ Texting and its representatives contacted T-Mobile, Open Market, and 4INFO to determine the reason T-Mobile was blocking text messages to and from EZ Texting.

28. T-Mobile and its representatives confirmed that T-Mobile was blocking EZ Texting based on the website, even though the website had been removed from EZ Texting's short code.

29. In other words, even when EZ Texting acceded to T-Mobile's (unreasonable and unlawful) demand simply to prevent further damage to EZ Texting's entire business, EZ Texting's short code was still blocked by T-Mobile.

30. T-Mobile and its representatives also stated that they did not approve of shared short codes, or at least, EZ Texting's shared short code.

31. Based on my industry knowledge, T-Mobile allows other companies to use shared short codes to exchange text messages with T-Mobile's customers.

32. Even though EZ Texting had immediately terminated its relationship with the website at issue and communicated that fact to T-Mobile and its agents, T-Mobile has continued

to block EZ Texting's short code since Friday, September 10, 2010. This action has imperiled EZ Texting's relationship with all of its customers, whose identities I cannot reveal for fear that EZ Texting's competitors, who are not having messages to and from their short codes unlawfully blocked by T-Mobile, soliciting these customers.

33. Despite all of EZ Texting's efforts to have its indirect interconnection with T-Mobile unblocked, T-Mobile has refused.

34. T-Mobile has stated that it will not stop blocking text messages exchanged with EZ Texting over the existing indirect interconnection facilities. Rather, T-Mobile has directed that EZ Texting start this indirect interconnection process entirely anew, even though EZ Texting has been interconnected with T-Mobile for over three years for purposes of exchanging text messages.

35. Re-starting the indirect-interconnection process to create new indirect interconnection facilities would take approximately six months and create significant, needless expense for EZ Texting, and again imperil all of EZ Texting's existing customer relationships. During this six month (or perhaps longer) period, text messages to and from EZ Texting's customers would remain blocked by T-Mobile. To my knowledge, T-Mobile has not subjected any other mobile marketing company similar to EZ Texting to such a burdensome process.

36. To my knowledge, T-Mobile is connected to a number of other mobile-marketing companies with which EZ Texting competes, such as Twitter (twitter.com), Clickatell (Pty) Ltd (clickatell.com), TextMarks, Inc. (TextMarks.com), 4INFO, Inc. (4info.com), Opt It, Inc. (Optit.com), Tatango, Inc. (Tatango.com), DoCircle, Inc. d/b/a Trumpia (Trumpia.com), Izigg.com, Protexting.com, Involvemobile.com, and mobileStorm (mobileStorm.com).

37. Other wireless service providers were also aware of the website with which T-Mobile took issue, but no other wireless carriers have blocked EZ Texting because of it.

D. Irreparable Harm

38. EZ Texting is being irreparably harmed by T-Mobile's blocking. EZ Texting faces the immediate destruction of its business if T-Mobile's unlawful blocking continues.

39. The essence of EZ Texting's business is the ability to send and receive text messages to and from any cell phone user. T-Mobile's blocking text messages directly and negatively impacts EZ Texting's business, as T-Mobile controls access to many millions of wireless consumers throughout the country.

40. A T-Mobile customer that is blocked cannot access any of the content which they desire, including the non-website content that T-Mobile never took any issue with. Access to that content later is not a substitute for earlier blocked content.

41. T-Mobile has millions of customers in the United States. EZ Texting's customers cannot exchange text message calls with T-Mobile's customers because of the blocking maintained by T-Mobile.

42. The businesses and non-profits that use EZ Texting to send and receive text messages will stop using EZ Texting if they cannot be reached by T-Mobile's customers because EZ Texting's competitors are not being blocked by T-Mobile.

43. EZ Texting has already had businesses and non-profits contact EZ Texting about the inability to exchange text messages with T-Mobile customers. If T-Mobile's call-blocking is not enjoined, EZ Texting will lose some or all of these customers to competitors, and EZ Texting's goodwill will be forever impaired.

44. EZ Texting also cannot attract new business because of T-Mobile's blocking. Given the competitive mobile-marketing marketplace, businesses and non-profits will not use EZ Texting if they cannot exchange text messages with T-Mobile, particularly when there are various market participants whose short codes are not being blocked by T-Mobile.

45. It will be inherently difficult, if not impossible, for EZ Texting to quantify the damage T-Mobile is causing it by blocking its short code.

46. EZ Texting will be put out of business if businesses and non-profits do not use EZ Texting's services and EZ Texting cannot attract new business.

47. T-Mobile customers will stop – and presumably have stopped – sending EZ Texting text messages now that they are blocked by T-Mobile.

48. The value of EZ Texting's short code, and therefore EZ Texting's business, is irreparably damaged if cell phone users, businesses, and non-profits view it as subject to blocking by T-Mobile.

49. EZ Texting is being irreparably harmed by T-Mobile's blocking.

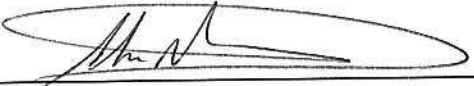
50. If T-Mobile is enjoined from blocking EZ Texting's text messages, the parties will simply be restored to the same relationship they were in before Friday, September 10, 2010. Again, T-Mobile's customers interacted without incident with the various users of short code 313131, including the website user that T-Mobile took issue with, since that user began using the short code in June 2009, and well before that.

51. T-Mobile will experience no burden in unblocking EZ Texting.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on: 9/16/10


Shahriyar Neman