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United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER PAYNE,
Plaintiff,
v.
SIEVA NETWORKS, INC.,
Defendant.

Case No. 24-cv-00901-JST

**ORDER GRANTING MOTION TO
DENY CLASS CERTIFICATION**

Re: ECF No. 19

Plaintiff Christopher Payne brings this putative class action against Defendant Sieva Networks, Inc. d/b/a Matrack based on allegations that Matrack is “violating the Telephone Consumer Protection Act (‘TCPA’) by sending unsolicited telemarketing text messages to consumers whose phone numbers are registered on the National Do Not Call Registry (‘DNC’).” ECF No. 1 at 1. He alleges that he “uses his cell phone number for personal use only,” and that the number “is not associated with a business.” *Id.* ¶ 20. He further alleges that he “registered a USDOT [United States Department of Transportation] number,” and that shortly thereafter, he received unsolicited text messages from Matrack to his cell phone number. *Id.* ¶¶ 27–32; *see also* ECF No. 22 at 6 (Payne’s opposition brief, stating that he “registered a USDOT number using form MCS-150 in his personal name using his residential cell phone number,” and providing a screenshot showing his USDOT number as 4161754).

Payne 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 (1) Matrack texted more than one time, (2) within any 12-month period, (3) where the person’s residential telephone number had been listed on the National Do Not Call Registry for at least thirty days, (4) for substantially the same reason Defendant texted Plaintiff.

1 *Id.* ¶ 35. Matrack has moved to deny class certification. The Court finds this motion suitable for
 2 resolution without oral argument, *see* Fed. R. Civ. P. 78(b); Civil L.R. 7-1(b), and will grant the
 3 motion.

4 To obtain class certification, “plaintiffs must make two showings.” *Olean Wholesale*
 5 *Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 66e (9th Cir. 2022) (en banc). First,
 6 they must satisfy the numerosity, commonality, typicality, and adequacy requirements of Rule
 7 23(a) of the Federal Rules of Civil Procedure:

8 One or more members of a class may sue or be sued as
 9 representative parties on behalf of all members only if: (1) the class
 10 is so numerous that joinder of all members is impracticable;
 11 (2) there are questions of law or fact common to the class; (3) the
 claims or defenses of the representative parties are typical of the
 claims or defenses of the class; and (4) the representative parties will
 fairly and adequately protect the interests of the class.

12 Fed. R. Civ. P. 23(a). Second, they “must show that the class fits into one of three categories”
 13 under Rule 23(b). *Olean*, 31 F.4th at 663. Payne invokes Rule 23(b)(3), which requires the Court
 14 to find “that the questions of law or fact common to class members predominate over any
 15 questions affecting only individual members, and that a class action is superior to other available
 16 methods for fairly and efficiently adjudicating the controversy.”¹ Fed. R. Civ. P. 23(b)(3).

17 Matrack contends that Payne cannot show either predominance or superiority.

18 Payne argues that Matrack’s motion to deny class certification is premature. However, the
 19 Ninth Circuit has made clear—in a case that Payne’s opposition fails to acknowledge—that
 20 “Rule 23 does not preclude a defendant from bringing a ‘preemptive’ motion to deny
 21 certification.” *Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 939 (9th Cir. 2009). The
 22 Ninth Circuit has also explained—again in a case that Payne fails to cite—that discovery is not
 23 always required prior to deciding whether to certify a class:

24 Although in some cases a district court should allow discovery to aid
 25 the determination of whether a class action is maintainable, the
 26 plaintiff bears the burden of advancing a prima facie showing that
 the class action requirements of Fed. R. Civ. P. 23 are satisfied or

27 ¹ The complaint cites both Rule 23(b)(2) and Rule 23(b)(3), ECF No. 1 ¶ 35, but Payne’s
 28 opposition refers only to Rule 23(b)(3) and does not argue that the Court should certify a class
 under Rule 23(b)(2), *see* ECF No. 22.

1 that discovery is likely to produce substantiation of the class
 2 allegations. Absent such a showing, a trial court's refusal to allow
 class discovery is not an abuse of discretion.

3 *Mantolete v. Bolger*, 767 F.2d 1416, 1424 (9th Cir. 1985).

4 For the reasons discussed below, Payne has failed to make the required showing as to
 5 predominance.² Payne asserts a single claim for relief under 47 U.S.C. § 227(c), which prohibits
 6 “telephone solicitations sent to *residential* telephone subscribers who have registered their phone
 7 numbers on the national do-not-call registry.” *Chennette v. Porch.com, Inc.*, 50 F.4th 1217, 1220
 8 (9th Cir. 2022) (emphasis added). “[R]egistered cell phone numbers that are used for both
 9 personal and business purposes are presumptively ‘residential’ within the meaning of § 227(c),”
 10 but “defendants may rebut the presumption and show that the cell phone is a business line.” *Id.* at
 11 1225. When “determining whether the presumption is rebutted,” courts must consider:

12 (1) how plaintiffs hold their phone numbers out to the public;
 13 (2) whether plaintiffs’ phones are registered with the telephone
 company as residential or business lines; (3) how much plaintiffs
 14 use their phones for business or employment; (4) who pays for the
 phone bills; and (5) other factors bearing on how a reasonable
 observer would view the phone line.

15 *Id.*

16 Payne would have the Court’s analysis stop at the presumption that numbers on the DNC
 17 are residential. He ignores that the presumption can be rebutted, and what factors must be
 18 considered when determining whether a presumptively residential number falls outside the
 19 protections of the TCPA because it is actually a business line. Although Payne cites cases in
 20 which courts have granted class certification in TCPA cases, including by accepting expert
 21 testimony regarding which numbers are residential, none of those cases post-dates the Ninth
 22 Circuit’s *Chennette* opinion or applied the test the court adopted. *See* ECF No. 22 at 13–15 (and
 23 cases cited therein). For example, “asking class members whether the line in question is a
 24 residential line during the class notification process,” as the court suggested in *Braver v. Northstar*
 25 *Alarm Services, LLC*, 329 F.R.D. 320, 329 (W.D. Okla. 2018), would not satisfy the multi-factor
 26 test established by *Chennette*.

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² The Court does not reach the parties’ arguments regarding superiority.

1 The cases cited by Payne are also factually distinguishable. In one case, for instance, the
2 court explained that it was reasonable for an expert to “assume[] that the phone numbers were
3 residential because [the defendant’s] agents were instructed to call residential real estate owners”
4 and to “use[] a LexisNexis database to identify numbers associated with businesses or the
5 government.” *Bumpus v. Realogy Brokerage Grp. LLC*, No. 3:19-cv-03309-JD, 2022 WL
6 867256, at *3 (N.D. Cal. Mar. 23, 2022). Here, by contrast, Matrack “targets trucking businesses”
7 that have registered with the USDOT. ECF No. 20 ¶ 5. “Apart from responding to inbound
8 requests to purchase its products, the only outbound calls Matrack places to sell its products and
9 services are placed to numbers those businesses have made publicly available by listing them with
10 the USDOT when they register as commercial truckers.” *Id.* ¶ 6. As Payne does not dispute,
11 USDOT numbers are required for “[c]ompanies that operate commercial vehicles transporting
12 passengers or hauling cargo in interstate commerce” and “commercial intrastate hazardous
13 materials carriers who haul types and quantities requiring a safety permit.” Federal Motor Carrier
14 Safety Administration (“FMCSA”), *Do I Need a USDOT Number?*,
15 <https://www.fmcsa.dot.gov/registration/do-i-need-usdot-number> [<https://perma.cc/Z2Q4-BS3U>].
16 Some states, including Texas, where Payne resides, “require their intrastate commercial motor
17 vehicle registrants to obtain a USDOT Number.” *Id.* Typing Payne’s USDOT number into the
18 query form on the FMCSA website lists Payne’s name under “COMPANY INFORMATION” and
19 states that he is an intrastate-only carrier of non-hazardous materials that has four drivers. *SAFER*
20 *Web – Company Snapshot CHRISTOPHER S PAYNE*, <https://perma.cc/D8NZ-RQ42>. Payne does
21 not offer any evidence that phone numbers—including what he contends is his personal cell phone
22 number—are registered with the USDOT for any non-business purpose.

23 Payne is correct that “[w]hether Matrack can introduce proof to defeat [the residential]
24 presumption in some cases is a matter for discovery.” ECF No. 22 at 13. However, the question
25 raised by Matrack’s motion is not whether the issue requires discovery; it is whether it can be
26 resolved by common proof. Payne cites two cases concluding that consent issues can be
27 addressed on a classwide basis if there is “little or no variation” in consent forms, *True Health*
28 *Chiropractic, Inc. v. McKesson Corp.*, 896 F.3d 923, 932 (9th Cir. 2018), or where “consent was

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1 obtained in an identical or substantially similar manner from class members,” *McCurley v. Royal*
2 *Seas Cruises, Inc.*, 331 F.R.D. 142, 175 (S.D. Cal. 2019), *class decertified in part on other*
3 *grounds*, 2020 WL 4582686 (S.D. Cal. Aug. 10, 2020). But, in this case, the issue is whether
4 phone numbers contacted by Matrack—all of which were registered with the USDOT, which is
5 some indication of a non-residential use—qualify as residential for purposes of the TCPA.
6 “[R]esolving each phone number’s residential status requires a fact-intensive inquiry. And the
7 burden to show the residential status is on [Payne],” who, to obtain class certification, must
8 “advance a viable theory employing generalized proof to establish residential status.” *Hirsch v.*
9 *USHealth Advisors, LLC*, 337 F.R.D. 118, 131 (N.D. Tex. 2020). Payne has failed to do so.
10 While it is possible that some of the numbers registered with the USDOT—including Payne’s
11 own—might qualify as residential under the fact-specific inquiry required by *Chennette*, Payne
12 has made no argument as to how that question can be answered without individualized inquiries.
13 Nor has he shown “that discovery is likely to produce substantiation of the class allegations” as to
14 this question. *Mantolete*, 767 F.2d at 1424.

15 Under these facts, the Court finds it proper to deny certification without discovery.
16 Matrack’s motion to deny class certification is granted.

17 **IT IS SO ORDERED.**

18 Dated: July 29, 2024

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21 JON S. TIGAR
22 United States District Judge
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