

Exhibit A2

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

Keon Jackson,

Plaintiff,

v.

Athena Bitcoin, Inc.,

Defendant.

Case No. 4:24-cv-00331-MW-MAF

FIRST AMENDED CLASS ACTION COMPLAINT

Pursuant to the Court’s Scheduling and Mediation Order, ECF No. 21, and the Parties’ Joint Scheduling Report, ECF No. 17, Plaintiff Keon Jackson has until December 16, 2024 to file an amended complaint. Accordingly, Jackson files this amended complaint.

INTRODUCTION

1. As the Supreme Court has explained, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls.... For nearly 30 years, the people’s representatives in Congress have been fighting back. As relevant here, the Telephone Consumer Protection Act of 1991, known as the TCPA, generally prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

2. Defendant Athena Bitcoin, Inc. (“Athena”) has contributed to this barrage of telephone spam by initiating illegal text messages to Plaintiff Keon Jackson (“Jackson”) and thousands of others like him.

3. In August of 2023, Jackson requested that Athena’s telemarketing text messages stop. Despite its acknowledgment of his request, Athena continued to send him telemarketing text messages.

4. Jackson wants this spam to stop. Jackson brings this action individually, and on behalf of putative class members, to seek injunctive relief and damages.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the TCPA. 47 U.S.C § 227.

6. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because a significant portion of events giving rise to this lawsuit occurred in this district and plaintiff resides in this district.

7. This Court has supplemental jurisdiction over the Florida state claims under 28 U.S.C § 1367.

PARTIES

8. Plaintiff Keon Jackson is a citizen of Florida, residing in Tallahassee.

9. Defendant Athena Bitcoin, Inc. is a Delaware corporation with its principal place of business in Miami, Florida.

10. Defendant Athena operates a network of over 3,000 cryptocurrency ATMs across the world, the vast majority of which are in the United States.

11. Plaintiff is, and at all times relevant hereto for the purposes of Fla. Stat. § 501.059(5) was, a “consumer” as defined by Fla. Stat. § 501.059(1)(b).

12. Defendant is, and at all times relevant hereto was, a “telephone solicitor” as defined by Fla. Stat. § 501.059(1)(i).

FACTUAL ALLEGATIONS

13. Athena owns and operates a global network of more than 3,000 Athena Bitcoin ATMs. These ATMs allow Athena’s customers to buy and sell cryptocurrencies, such as Bitcoin, in exchange for their local currency.¹

14. Jackson first used an Athena Bitcoin ATM in Tallahassee, Florida on March 7, 2023. The ATM required Jackson to input his phone number in order to make a transaction.

15. Jackson then received a verification code in an SMS text message from Athena. This code allowed him to complete his transaction at the Athena ATM.

16. Jackson again visited an Athena ATM in Tallahassee on April 5, 2023. Again, he received a verification code that allowed him to transact.

17. After April 5, 2023, Jackson never visited an Athena ATM again and consequently never received another verification code in an SMS text message from Athena.

18. Starting on April 26, 2023, Jackson began receiving telemarketing text messages from the short code number 57716 – the same number that sent him

¹ See Athena Bitcoin Global’s S-1/A filed January 12, 2024, at p. 2.
https://www.sec.gov/Archives/edgar/data/1095146/000168316824000275/athena_s1a5.htm

the verification code messages. Jackson received a total of five messages between April 26 and July 27, 2023:

- i. April 26, 2023 at 6:35pm UTC from 57716
New Bitcoin ATMs in Florida! Buy or sell Bitcoin quickly & easily. Visit our new locations. links.athenabitcoin.com/ari. Type STOP to opt out.
- ii. June 15, 2023 at 8:01am UTC from 57716
Save big! Enjoy 25% OFF your next Bitcoin purchase at our ATMs until 06/19/23. Select locations only: . None. Type STOP to opt out.
- iii. June 21, 2023 at 9:18pm UTC from 57716
Exciting news! Discover our latest locations featuring Athena Bitcoin ATMs Discover the easiest way to access Bitcoin. Find us: athenabitcoin.com/atm-locations/.
- iv. June 28, 2023 at 2:48pm UTC from 57716
Happy 4th of July! Get 25% OFF your next Bitcoin purchase at our ATMs. Offer ends 07/05/23. Don't miss out: links.athenabitcoin.com/01m Type STOP to opt out.
- v. July 27, 2023 at 8:04am UTC from 57716
Summer Sale! Enjoy 10% OFF your next Bitcoin purchase at our ATMs nationwide. Ends 7/31/23. Find locations: athenabitcoin.com/summer-sale Type STOP to opt out.

19. On August 14, 2023, at 8:39pm UTC, Jackson sent a text message saying “stop” to 57716.

20. Jackson immediately received a response from 57716 saying the STOP was received and that he would no longer receive marketing text messages.

21. However, just two days later, on August 16, 2023, the marketing text messages started again. They continued until December 28, 2023:

- i. August 16, 2023 at 10:52am UTC from 57716
Flash Deal: Enjoy 10% OFF your next purchase at our Athena Bitcoin ATMs. Ends 8/23/23. Start saving now! athenabitcoin.com/flash-deal/ Type STOP to opt out.
- ii. August 25, 2023 at 6:54pm UTC from 57716
Limited Time Offer! 15% OFF your next purchase at Athena Bitcoin ATMs. Ends 8/31/23. Select Locations
Only: athenabitcoin.com/super-promo/ Type STOP to opt out.
- iii. August 31, 2023 at 3:12am UTC from 57716
Flash Sale Alert! Get 25% off your next purchase at Athena Bitcoin ATMs. Ends 9/3/2023. Don't miss out! www.athenabitcoin.com/flash-deal Type STOP to opt out.
- iv. September 27, 2023 at 2:32am UTC from 57716
Farewell September! Celebrate it with 25% OFF your next purchase at our Athena Bitcoin ATMs. Ends 10/5/23: athenabitcoin.com/fall-deal/ Type STOP to opt out.
- v. November 21, 2023 at 3:59pm UTC from 57716
Exclusive Black Friday Deal! Get 25% OFF on your next Bitcoin purchase at our ATMs. Ends
11/26/23: <https://athenabitcoin.com/black-friday> Type STOP to opt out.
- vi. December 6, 2023 at 11:24pm UTC from 57716
Start December Right! Enjoy 10% OFF your next Bitcoin purchase at our ATMs. Don't miss out! Ends
12/17/23: <https://athenabitcoin.com/dec23> Type STOP to opt out.
- vii. December 21, 2023 at 6:04pm UTC from 57716
Gift BTC Magic! Celebrate Christmas with 25% OFF your next Bitcoin purchase at our ATMs. Ends
12/26/23 <https://athenabitcoin.com/xmas-sale> Type STOP to opt out.
- viii. December 28, 2023 at 6:38pm UTC from 57716
Start the year right and enjoy 20% OFF at Athena Bitcoin ATMs!

Explore now: <https://athenabitcoin.com/new-year-deal> Hurry, ends 1/1/24 Type STOP to opt out.

22. In total, Jackson received eight telemarketing text messages from Athena after he sent a stop request.
23. As demonstrated by the above messages, Athena does not honor consumer requests to opt-out of telemarketing text messages.
24. Athena has not instituted procedures for maintaining a list of persons who request not to receive telemarketing text messages, as evidenced by Athena's text messages to Jackson after he made a stop request.
25. Therefore, Athena sent telemarketing text messages to Jackson prior to implementing and maintaining proper internal do not call list procedures.
26. The purpose of the text messages was to encourage Jackson to purchase cryptocurrencies at Athena's ATMs.
27. Athena's telemarketing text messages, like those sent to Jackson, are primarily used to increase total transaction volume at its ATMs.
28. Athena is not a cryptocurrency exchange like, for instance, Coinbase. Instead, Athena purchases the cryptocurrencies itself and sells them to users of its ATMs at a mark-up of over 20%.²
29. The sale of cryptocurrencies (primarily Bitcoin) through its ATMs is Athena's primary source of revenue.³

² See Athena Bitcoin Global's S-1/A filed January 12, 2024, at p. 7.

https://www.sec.gov/Archives/edgar/data/1095146/000168316824000275/athena_s1a5.htm

³ See Athena Bitcoin Global's 2023 Amended Annual Report, at p. 39.

<https://www.otcmarkets.com/otcapi/company/financial-report/397104/content>

30. Upon information and belief, Athena, like many cryptocurrency ATM companies, targets its offerings at the unbanked population, usually focusing on lower-income areas.⁴

31. If the Athena Bitcoin ATM users purchased Bitcoin through an online exchange like Coinbase, they would likely be charged a commission of 0.5-5%.⁵ Instead, by purchasing through the Athena ATMs, they are buying at an inflated price.

32. Athena's telemarketing text messages, therefore, entice consumers to return to its ATMs and continue purchasing cryptocurrencies at an inflated price.

33. Athena sent all of the text messages at issue to 850-694-6782.

34. Jackson is the residential user of the cell phone number 850-694-6782. Jackson uses this phone number at home. Jackson makes and receives all of his personal calls and text messages on this phone number. This is Jackson's only phone number. Jackson does not use this phone number in any business.

35. Athena's text messages are a nuisance and annoyance to Jackson. The calls have invaded Jackson's privacy. The spam has diminished the value of Jackson's phone and Jackson's enjoyment of life.

LEGAL STANDARD

36. **Internal Do Not Call Procedures.** "No person or entity shall initiate... any call for telemarketing purposes to a residential telephone subscriber

⁴ See <https://www.bloomberg.com/news/articles/2024-04-17/bitcoin-atms-flood-black-latino-areas-charging-fees-up-to-22>; <https://thebeaconnews.org/stories/2023/08/15/high-fee-crypto-atms-center-around-low-income-parts-of-kansas-city/>

⁵ <https://help.coinbase.com/en/exchange/trading-and-funding/exchange-fees>

unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive such calls.” 47 C.F.R. § 64.1200(d).

Telemarketers “must honor a residential subscriber's do-not-call request.” *Id.* at 64.1200(d)(3).

37. **Application to Text Messages.** The rules set forth in paragraph (c) and (d) of [47 C.F.R. § 64.1200] are applicable to any person or entity making telephone solicitations or telemarketing calls or text messages to wireless telephone numbers.” 47 C.F.R. § 64.1200(e).

38. **Florida Telephone Solicitation Act.** “A telephone solicitor or other person may not initiate an outbound telephone call, text message, or voicemail transmission to a consumer, business, or donor or potential donor who has previously communicated to the telephone solicitor or other person that he or she does not wish to receive an outbound telephone call, text message, or voicemail transmission...[m]ade by or on behalf of the seller whose goods or services are being offered.” Fla. Stat. § 501.059(5)(a).

CLASS ACTION ALLEGATIONS

39. Pursuant to Federal Rule of Civil Procedure 23(b)(2) and 23(b)(3), Jackson brings this action on behalf of all other persons similarly situated.

40. Jackson proposes the following Classes:

The Internal Do Not Call Class: All persons in the United States (1) to whom Athena delivered, or caused to be delivered, more than one text message promoting goods or services within any 12-month period, (2) more than 30 days after receiving a do not call request, (3) within the last four years prior to the filing of this action through the date of class certification, (4) excluding business numbers.

The FTSA Stop Class: All Florida residents (1) with telephone numbers having a Florida area code, (2) to whom Athena delivered, or caused to be delivered, one or more text messages promoting goods or services, (3) more than 15 days after receiving a stop request, (4) since July 1, 2021, through the date of class certification.

41. Counsel, Athena, and Athena’s employees and agents are excluded from the classes.

NUMEROSITY

42. Jackson does not know the exact number of class members but reasonably believes the number to be in the thousands, thus making joinder of all class members impracticable.

43. Class members are identifiable through phone records and phone number databases.

COMMONALITY

44. There are questions of law and fact common to Jackson and the class members including but not limited to:

- i. Whether Athena instituted the requisite internal do not call procedures.
- ii. Whether Athena honors opt-out or “stop” requests.
- iii. Whether Athena’s text messages constitute telemarketing.

- iv. Whether Jackson and class members are entitled to statutory damages, trebled damages, and injunctive relief.

TYPICALITY

45. Jackson's claims are typical of the claims of the class members. Jackson's claims, like the class members' claims, arise out of the same common course of conduct by Athena and are based on the same legal and remedial theories.

ADEQUATE REPRESENTATION

46. Jackson is an adequate representative of the class because Jackson's interests do not conflict with the interests of the class members, Jackson will fairly and adequately protect the interests of the class members, and Jackson is represented by counsel skilled and experienced in class actions, including TCPA class actions.

PREDOMINANCE OF COMMON QUESTIONS

47. Common questions of law and fact predominate over questions affecting only individual class members.

SUPERIORITY

48. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the damages are statutory. Notice to class members can be provided by mail or other means. Class treatment is superior to multiple individual suits or piecemeal litigation because it conserves judicial resources, promotes consistency and efficiency of adjudication,

provides a forum for small claimants, and deters illegal activities. There will be no significant difficulty in the management of this case as a class action.

49. The likelihood that individual class members will prosecute separate actions is remote due to the time and expense necessary to prosecute an individual case.

FIRST CAUSE OF ACTION
Failure to Honor Opt-Out Requests
(On Behalf of Plaintiff and the Internal Do Not Call Class)

50. Athena violated 47 C.F.R. § 64.1200(d) by delivering, or causing to be delivered, telemarketing text messages to Jackson and the Internal Do Not Call Class without instituting the requisite telemarketing procedures, including honoring their do not call requests.

51. Jackson and members of the Internal Do Not Call Class have been damaged and are entitled to an award of \$500 in statutory damages for each violation. 47 U.S.C. § 227(c)(5).

52. The court should award \$1,500 in statutory damages for each violation because the violations were knowing and willful. *Id.*

SECOND CAUSE OF ACTION
Violation of the Florida Telephone Solicitation Act
(On Behalf of Jackson and the FTSA Stop Class)

53. Athena violated Fla. Stat. § 501.059(5)(a) by delivering, or causing to be delivered, text messages to Jackson and the FTSA Stop Class 15 days after they had responded “stop” to Athena’s text messages.

54. Jackson and members of the FTSA Stop Class have been damaged and are entitled to an award of \$500 in statutory damages for each violation. Fla. Stat. § 501.059(10).

55. The court should award \$1,500 in statutory damages for each violation because the violations were knowing and willful. *Id.*

RELIEF REQUESTED

Jackson respectfully requests the Court grant the following relief:

- A. Certification of the proposed Classes;
- B. Appointment of Jackson as class representative;
- C. Appointment of the undersigned as lead counsel for the Classes;
- D. Injunctive relief, as allowed by law;
- E. An award of damages to Jackson and class members, as allowed by law;
- F. An award of reasonable attorneys' fees and costs pursuant to Fla. Stat. § 501.059(11); and
- G. Orders granting such other relief as the Court deems necessary, just, and proper.

JURY DEMAND

Jackson requests a jury trial as to all claims of the Complaint so triable.

Dated December 16, 2024

Respectfully submitted,

/s/ David Mitchell

David Mitchell
Florida Bar No. 067249
Reid Hudson, *Pro Hac Vice*
LawHQ, P.C.
299 S. Main St. #1300
Salt Lake City, UT 84111
385-285-1090
david.mitchell@lawhq.com
reid.hudson@lawhq.com
Attorneys for Plaintiff