

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

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TED A. WHITSEL, on behalf of himself and	:	Case No.: 21-1433
others similarly situated,	:	
	:	
Plaintiff,	:	Class Action Complaint
	:	
vs.	:	Jury Trial Demanded
	:	
LOANDEPOT.COM, LLC,	:	
	:	
Defendant.	:	
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Nature of the Action

1. Ted A. Whitsel (“Plaintiff”) brings this class action against Loandepot.com, LLC (“Defendant”) under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, and the Florida Consumer Collection Practices Act (“FCCPA”), Fla. Stat. § 559.55 et seq.

2. Section 227(b)(1)(A)(iii) of the TCPA sets forth restrictions on the use of automated telephone equipment and prerecorded voice calls, and provides in pertinent part:

It shall be unlawful for any person within the United States, or any person outside the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

3. Upon information and belief, Defendant routinely violates 47 U.S.C. § 227(b)(1)(A)(iii) by placing non-emergency telephone calls to consumers’ cellular telephone numbers using an artificial or prerecorded voice, without the prior express consent of the consumers,

in that it continues to place calls using an artificial or prerecorded voice to cellular telephone numbers after being instructed to stop calling those numbers.

4. Section 559.72(7) of the FCCPA prohibits any person, in collection of a consumer debt, from “[w]illfully communicat[ing] with the debtor . . . with such frequency as can reasonably be expected to harass the debtor . . . , or willfully engag[ing] in other conduct which can reasonably be expected to abuse or harass the debtor”

5. Upon information and good faith belief, Defendant routinely violates Fla. Stat. § 559.72(7) by willfully communicating with debtors with such frequency as can reasonably be expected to harass them, and by willfully engaging in other conduct which can reasonably be expected to abuse or harass debtors, in that it continues to deliver artificial or prerecorded voice messages to debtors after being instructed to stop calling them.

6. Section 559.72(18) of the FCCPA prohibits any person, in connection with the collection of a consumer debt, from communicating with a debtor if the person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address, subject to certain limited exemptions not applicable here.

7. Upon information and good faith belief, Defendant routinely violates Fla. Stat. § 559.72(18) by initiating communications with consumers when it had knowledge they are represented by counsel.

Jurisdiction

8. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

9. This Court has supplemental jurisdiction over Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

10. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to this action occurred in this District.

Parties

11. Plaintiff is a natural person who at all relevant times resided in Hillsborough County, Florida.

12. Plaintiff is obligated, or allegedly obligated, to pay a debt owed or due, or asserted to be owed or due, Defendant.

13. Plaintiff's obligation, or alleged obligation, owed or due, or asserted to be owed or due, arises from a transaction in which the money, property, insurance, or services that are the subject of the transaction were incurred primarily for personal, family, or household purposes—namely, a mortgage loan from Defendant (the "Debt").

14. Plaintiff is a "consumer" and a "debtor" as defined by Fla. Stat. § 559.55(8).

15. Defendant, based in Orange County, California, is a non-bank provider of direct-to-consumer loans.

Factual Allegations

16. In October 2018, Plaintiff obtained a mortgage loan from Defendant.

17. Defendant contends that the loan went into default in August 2019.

18. In approximately January 2020, Defendant filed a foreclosure action against Plaintiff in the Circuit Court of Hillsborough County, Florida.

19. Some time thereafter, Defendant began placing calls to Plaintiff's cellular telephone number ending in 7578, using an artificial or prerecorded voice.

20. In late 2020, Plaintiff spoke with a representative of Defendant, informed Defendant that he was represented by counsel, and advised Defendant that it should only communicate with his counsel going forward.

21. Thereafter, on December 9, 2020, counsel for Plaintiff sent correspondence to Defendant's counsel in the foreclosure matter informing Defendant that Plaintiff was represented by counsel and that Defendant was advised to cease all contacts with Plaintiff immediately.

22. Then on December 15, 2020, counsel for Plaintiff filed and served an appearance in the foreclosure action that Defendant was prosecuting against Plaintiff, again advising Defendant that Plaintiff was represented by counsel.

23. No matter, after Defendant was on notice that Plaintiff no longer wished to be called and that he was represented by counsel, Defendant subsequently placed at least ten more calls to Plaintiff's cellular telephone number and delivered messages during some of these calls using an artificial or prerecorded voice.

24. Upon information and good faith belief, Defendant placed its calls to Plaintiff's cellular telephone number voluntarily.

25. Upon information and good faith belief, Defendant placed its calls to Plaintiff's cellular telephone number under its own free will.

26. Upon information and good faith belief, Defendant had knowledge that it was using an artificial or prerecorded voice, to place its calls to Plaintiff's cellular telephone number.

27. Upon information and good faith belief, Defendant intended to use an artificial or prerecorded voice to place its calls to Plaintiff's cellular telephone number.

28. Upon information and good faith belief, Defendant maintains business records that show all calls it placed to Plaintiff's cellular telephone number.

29. Plaintiff suffered actual harm as a result Defendant's calls in that he suffered an invasion of privacy, an intrusion into his life, a private nuisance, and harassment.

30. Defendant's calls also harmed Plaintiff by depleting the battery life on his cellular phone, which cost Plaintiff time and expense to recharge, and by using minutes allocated to Plaintiff.

31. Upon information and good faith belief, Defendant, as a matter of pattern and practice, delivers artificial or prerecorded voice messages to telephone numbers assigned to a cellular telephone service, absent prior express consent, in that it continues to place calls using an artificial or prerecorded voice after being instructed to stop calling those numbers.

Class Action Allegations

32. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b) on behalf of himself and three classes of similarly situated individuals as defined below:

TCPA Class

All persons and entities throughout the United States (1) to whom Loandepot.com, LLC placed, or caused to be placed, at least one call (2) directed to a number assigned to a cellular telephone service, by (3) using an artificial or prerecorded voice, (4) within four years preceding the date of this complaint through the date of class certification, (5) after the called party instructed Loandepot.com, LLC to cease calling his or her cellular telephone number.

FCCPA Revocation Class

All persons throughout Florida (1) to whom Loandepot.com, LLC placed, or caused to be placed, at least one call, (2) within two years preceding the date of this complaint through and including the date of class certification, (3) and in connection with the collection of a consumer debt, (4) after the called party instructed Loandepot.com, LLC to cease calling his or her cellular telephone number.

FCCPA Representation Class

All persons throughout Florida (1) to whom Loandepot.com, LLC placed, or caused to be placed, at least one call, (2) within two years preceding the date of this complaint through and including the date of class certification, (3) and in connection with the collection of a consumer debt, (4) after Loandepot.com, LLC was instructed that the called party was represented by counsel.

Excluded from the classes are Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant has or had a controlling interest.

33. The proposed classes are so numerous that, upon information and belief, joinder of all members is impracticable.

34. The exact number of members of the classes is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery.

35. The proposed classes are ascertainable because they are defined by reference to objective criteria.

36. In addition, and upon information and belief, the identities of all members of the classes can be ascertained using business records maintained by Defendant and third parties.

37. Plaintiff's claims are typical of the claims of the members of the classes because all of the class members' claims originate from the same conduct, practice and procedure on the part of Defendant, and Plaintiff possesses the same interests and has suffered the same injuries as each class member.

38. Like all members of the proposed TCPA Class, Defendant made telephone calls to Plaintiff using an artificial or prerecorded voice, without his consent, in violation of 47 U.S.C. § 227.

39. Further, like all members of the proposed FCCPA Revocation Class, Defendant made telephone calls to Plaintiff in connection with the collection of a consumer debt, after Plaintiff instructed Defendant to stop calling him.

40. Like all members of the proposed FCCPA Representation Class, Defendant made telephone calls to Plaintiff in connection with the collection of a consumer debt, after Defendant was aware that Plaintiff was represented by counsel.

41. Plaintiff will fairly and adequately protect the interests of the members of the classes and has retained counsel experienced and competent in class action litigation.

42. Plaintiff's counsel has been previously certified as class counsel in numerous TCPA and Fair Debt Collection Practices Act class actions.

43. Plaintiff has no interests that are contrary to or in conflict with the members of the classes that he seeks to represent.

44. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable.

45. Furthermore, as the damages suffered by individual members of the classes may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the classes to individually redress the wrongs done to them.

46. There will be little difficulty in the management of this action as a class action.

47. Issues of law and fact common to the members of the classes predominate over any questions that may affect only individual members, in that Defendant has acted on grounds generally applicable to each class.

48. Among the issues of law and fact common to the classes are:

- a. Defendant's violations of the TCPA as alleged in this class action complaint;
- b. Defendant's violations of the FCCPA as alleged in this class action complaint;
- c. Defendant's use of an artificial or prerecorded voice;
- d. Defendant's practice of placing calls to cellular telephone numbers after being instructed to stop calling; and
- e. the availability of statutory damages.

49. Absent a class action, Defendant's violations of the law will be allowed to proceed without a full, fair, judicially supervised remedy.

Count I: Violation of 47 U.S.C. § 227(b)(1)(A)(iii) as to Plaintiff and the TCPA Class

50. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1-49.

51. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) by utilizing an artificial or prerecorded voice in connection with calls it placed to Plaintiff's cellular telephone number, without his consent.

Count II: Violation of Fla. Stat. § 559.72(7) as to Plaintiff and the FCCPA Revocation Class

52. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1-49.

53. Defendant violated Fla. Stat. § 559.72(7) by willfully communicating with him with such frequency as could reasonably be expected to harass him and by willfully engaging in other conduct which can reasonably be expected to abuse or harass him.

54. Defendant did so by repeatedly dialing Plaintiff's cellular telephone number and using an artificial or prerecorded voice after being informed that it should no longer call him as he was represented by counsel.

Count III: Violations of Fla. Stat. § 559.72(18) as to Plaintiff and the Representation Class

55. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1-49.

56. Defendant violated Fla. Stat. § 559.72(18) by initiating communications with Plaintiff when it had knowledge that he was represented by counsel.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action and designating Plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

(b) Adjudging that Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii), and enjoining Defendant from continuing to place calls to Plaintiff's cellular telephone number, from placing calls to consumers' cellular telephone numbers by using an artificial or prerecorded voice without the prior express consent of the consumers, and from committing further violations of 47 U.S.C. § 227(b)(1)(A)(iii) with respect to the TCPA Class;

(c) Adjudging that Defendant violated Fla. Stat. § 559.72(7) and Fla. Stat. § 559.72(18), and enjoining Defendant from further violations of Fla. Stat. § 559.72(7) and Fla. Stat. § 559.72(18) with respect to Plaintiff and the other members of the FCCPA Revocation Class and the FCCPA Representation Class, respectively;

(d) Awarding Plaintiff and members of the TCPA Class statutory damages pursuant to 47 U.S.C. § 227(b)(3) in an amount up to \$1,500.00 per violation;

(e) Awarding Plaintiff and members of the FCCPA Revocation Class and the FCCPA Representation Class statutory damages pursuant to Fla. Stat. § 559.77(2).

(f) Awarding Plaintiff and members of the classes their reasonable costs, expenses, and attorneys' fees incurred in this action, including expert fees, pursuant to Fla. Stat. § 559.77(2) and Rule 23 of the Federal Rules of Civil Procedure; and

(g) Awarding other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiff hereby demands a trial by jury.

Dated: June 14, 2021

Respectfully submitted,

/s/ James L. Davidson

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classes