

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

DEMARSH ANTUAN TARVER,

Plaintiff,

v.

CREDITBOX.COM, LLC,

Defendant.

CIVIL COMPLAINT

CASE NO. 1:17-cv-02260

DEMAND FOR JURY TRIAL

COMPLAINT

NOW comes DEMARSH ANTUAN TARVER (“Plaintiff”), by and through his attorneys, Sulaiman Law Group, Ltd. (“Sulaiman”), complaining as to the conduct of CREDITBOX.COM LLC (“Defendant”) as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action for damages pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. §227 and the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”) under 815 ILCS 505/1 for Defendant's unlawful practices.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the TCPA. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for the state law claim pursuant to 28 U.S.C. §1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Illinois and a substantial portion of the events or omissions giving rise to the claims occurred within the Northern District of Illinois.

PARTIES

4. Plaintiff is a 41 year-old natural person residing at 7519 South King Drive, Chicago, Illinois, which falls within the Northern District of Illinois.

5. Plaintiff is a “person” as defined by 47 U.S.C. §153(39).

6. Defendant is a lender that provides online loans and installment loans to consumers located in various states throughout the country. Defendant was formed under the laws of the State of Delaware, but maintains its headquarters at 880 Lee Street, Suite 302, Des Plaines, Illinois, and it regularly collects upon consumers located in Illinois.

7. Defendant is a “person” as defined by 47 U.S.C. §153(39).

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. Towards the end of 2016, Plaintiff began receiving calls from Defendant to his cellular phone, (773) XXX-8223. *See* attached Exhibit A for a true and correct copy of an affidavit signed by Plaintiff.

10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in 8223. Plaintiff is and has always been financially responsible for the cellular phone and its services.

11. The phone number that Defendant most often uses to contact Plaintiff is (888) 669-4227.

See Exhibit A.

12. Upon information and belief, the aforementioned phone number ending in 4227 is regularly utilized by Defendant to contact consumers in Illinois during its collection activities.

13. When answering calls from Defendant, Plaintiff has experienced a recorded message. On other answered calls, Plaintiff experiences a brief pause, lasting approximately four to five seconds in length, before a live representative begins to speak. *Id.*

14. Upon speaking with one of Defendant's representatives, Plaintiff was informed that it was seeking to collect upon an outstanding loan payment that Plaintiff had no knowledge of. *Id.*

15. Plaintiff told Defendant's representative to stop contacting him. *Id.*

16. Defendant's calls persisted and on one phone call, one of its representatives even told Plaintiff that it would remove him from its calling list. *Id.*

17. Plaintiff has demanded that Defendant stop calling him on multiple occasions, but despite these demands and Defendant's assurances, it has continued to call his cellular phone up until the date of the filing of this complaint. *Id.*

18. Defendant has also called Plaintiff's cellular phone multiple times during the same day. *Id.*

19. For instance, on February 6, 2017, Defendant called Plaintiff's cellular phone not less than 4 times. *Id.*

20. Plaintiff has received not less than 15 phone calls from Defendant since asking it to stop calling. *Id.*

21. During one phone call with Defendant, its representative threatened Plaintiff and shouted degrading expletives towards him. *Id.*

22. Suffering from a terminal illness as well as post-traumatic stress disorder (“PTSD”), Defendant’s phone calls have caused Plaintiff a great deal of added stress and have worsened his overall physical condition. *Id.*

23. Defendant also continuously called Plaintiff’s cellular phone while he was mourning the loss of his family member who was murdered. *Id.*

24. Frustrated over the persistent calls, Plaintiff spoke with Sulaiman regarding his rights, resulting in costs and expenses.

25. Plaintiff has been unfairly harassed by Defendant's actions.

26. With the goal of specifically addressing Defendant’s conduct, Plaintiff has expended approximately \$68.00 to purchase and maintain an application subscription on his cellular phone to block the calls, resulting in pecuniary loss. *Id.*

27. Plaintiff has suffered concrete harm as a result of Defendant’s actions, including but not limited to, invasion of privacy, aggravation that accompanies collection telephone calls, emotional distress, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of his telephone services, loss of cellular phone capacity, diminished cellular phone functionality, decreased battery life on his cellular phone, and diminished space for data storage on his cellular phone.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

28. Plaintiff repeats and realleges paragraphs 1 through 27 as though fully set forth herein.

29. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using an automatic telephone dialing system (“ATDS”) without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to

store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

30. Defendant used an ATDS in connection with its communications directed towards Plaintiff. The recorded message and brief pause that Plaintiff experienced during answered calls before being connected to a live representative of Defendant is instructive that an ATDS was being used. Similarly, the frequency and nature of Defendant’s calls strongly suggests that an ATDS was being utilized.

31. Defendant violated the TCPA by placing phone calls to Plaintiff’s cellular phone using an ATDS without his consent. Any consent Plaintiff *may* have given to Defendant was explicitly revoked by his multiple demands to cease contact.

32. The calls placed by Defendant to Plaintiff were regarding attempted business transactions and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

33. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant’s willful and knowing violations of the TCPA should trigger this Honorable Court’s ability to triple the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, DEMARSH ANTUAN TARVER, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Enjoining Defendant from further contacting Plaintiff; and

- e. Awarding any other relief as this Honorable Court deems just and appropriate.

**COUNT II – VIOLATIONS OF THE ILLINOIS
CONSUMER FRAUD AND DECEPTIVE BUSINESS PRACTICES ACT**

34. Plaintiff restates and realleges paragraphs 1 through 33 as though fully set forth herein.

35. Plaintiff is a “person” and “consumer” as defined by 815 ILCS 505/1(c) and (e) of the ICFA.

36. Defendant’s attempted collection calls to Plaintiff are “trade” and “commerce” as defined by 815 ILCS 505/1(f) of the ICFA.

37. The ICFA states:

“Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment of any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact . . . in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damaged thereby.” 815 ILCS 505/2.

38. Defendant violated 815 ILCS 505/2 by engaging in an unfair and deceptive act or practice in contacting Plaintiff. It was unfair for Defendant to relentlessly contact Plaintiff through means of an ATDS when he requested that it no longer do so. Defendant ignored Plaintiff’s numerous requests and continued to contact him, systematically calling his cellular phone multiple times during the same day. Following its characteristic behavior in placing voluminous collection phone calls to consumers, the calls here were placed with the hope that Plaintiff would succumb to its harassing behavior and make a payment. Defendant ignored Plaintiff’s prompts to cease its calls and continued to seek payment from him, even while he was mourning the loss of a family member who was murdered.

39. Defendant has also placed multiple calls to Plaintiff's cellular phone in the same day, even after being told to cease calling. Placing multiple calls in a short amount of time is extremely harassing behavior that amounts to unfair practice, especially after being told by Plaintiff that he does not wish to be contacted.

40. The ICFA was designed to protect consumers, such as Plaintiff, from the exact behavior committed by Defendant.

41. Defendant conducts the above described behavior on a wide and frequent basis. This goes against the state's goal of preventing the phone from frequently ringing with unwanted calls. Every call uses some of the phone owner's time and mental energy, both of which are precious.

42. The ICFA further states:

“Any person who suffers actual damage as a result of a violation of this Act committed by any other person may bring an action against such person. The court, in its discretion may award actual economic damages or any other relief which the court deems proper.” 815 ILCS 505/10a.

43. As pled in paragraphs 20 through 27, Plaintiff has suffered actual damages as a result of Defendant's unlawful collection practices. As such, Plaintiff is entitled to relief pursuant to 815 ILCS 505/10a. An award of punitive damages is appropriate because Defendant's conduct was outrageous, willful and wanton, and showed a reckless disregard for the rights of Plaintiff. Plaintiff informed Defendant to stop calling him several times and during one conversation, one of its representatives even assured him that it would remove his phone number from its calling list. Yet, in defiance of its assurance, Defendant unfairly and deceptively continued its onslaught of phone calls to Plaintiff's cellular phone. During another call, Defendant's representative shouted extremely degrading expletives towards Plaintiff. This outrageous and willful conduct exposes Defendant's reckless disregard for the rights of Plaintiff. Plaintiff suffers from a terminal illness

as well as PTSD, and Defendant's behavior has only exacerbated his symptoms. Upon information and belief, Defendant regularly engages in the above described behavior against consumers in Illinois and for public policy reasons should be penalized.

WHEREFORE, Plaintiff, DEMARSH ANTUAN TARVER, respectfully requests that this Honorable Court enter judgment in his favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Awarding Plaintiff actual and punitive damages, in an amount to be determined at trial, for the underlying violations;
- c. Awarding Plaintiff costs and reasonable attorney fees;
- d. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: March 23, 2017

Respectfully submitted,

s/ Nathan C. Volheim
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