



Fair or Foul?

THE PITFALLS OF TECHNOLOGICAL
DEBT COLLECTION WITHOUT CONSENT

Increased, Assertive Debt Collection

Behold, I send you forth as sheep in the midst of wolves: be therefore wise as serpents . . .



Relevant Statutes

Privacy & Anti-Solicitation

- Telephone Consumer Protection Act (“TCPA”)
 - 47 U.S.C 227(b)(1)(A)

Debt Collection

- Fair Debt Collection Practices Act (“FDCPA”)
 - 15 USC § 1692
- North Carolina Deceptive Trade Practices Act
 - N.C. Gen. Stat. , §§75-1.1 et seq.
- North Carolina Debt Collection Act
 - N.C. Gen. Stat. , §§75-50 et seq..
- United States Bankruptcy Code
 - 11 USC §§ 362, 524



No Further Consent to Collect

Fair Debt Collection Practices Act (FDCPA)

- 15 U.S.C. § 1692c(a)(2): Attorney Representation
- 15 U.S.C. § 1692c(c): Cease & Desist

North Carolina Deceptive & Unfair Trade Practices Act

- N.C Gen. Stat. § 75-55(3)
- “No debt collector shall collect or attempt to collect any debt by use of any unconscionable means. Such means include, but are not limited to, the following:
 - (3) Communicating with a consumer (other than a statement of account used in the normal course of business) whenever the debt collector has been notified by the consumer's attorney that he represents said consumer.

United State Bankruptcy Code

- 11 U.S.C. § 362: Stay of Creditors
- 11 U.S.C. § 524: Permanent Injunction



Telephone Consumer Protection Act (TCPA)

The TCPA was passed because Congress believed that automated and prerecorded telephone calls were a **greater nuisance** and **invasion of privacy** than live calls, that such calls were **costly** and such calls were **inconvenient**.

47USC 227(b)(1)(A)(iii)

“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 to **make any call** (other than a call made for emergency purposes or made with the **prior express consent** of the called party) using an **automatic telephone dialing system** or an **artificial or pre-recorded voice** . . . to any telephone number assigned to a . . . **cellular telephone** service...”

NOTE: Not dealing with TCPA section prohibiting solicitation or calls to landline; also not dealing with section laying out Do Not Call (“DNC”) Registry



TCPA Elements & Issues

❖ Make a Call

- Place or initiate
- Does not require “communication”
- Texts count as call

❖ Prior Express Consent

-In re: Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991, 23. F.C.C.R. 559 (2008): presumed given if cell number provided in transaction that gives rise to the Debt.

--Express or Implied? *Mais v. Gulf Coast Collection Bureau, Inc.*, 944 F. Supp. 1226 (S.D. Fla. 2013)

❖ Automatic Telephone Dialing System

- Store #s; random number generation
- Does not matter if used; present capacity to do so
- Predictive telephone dialing systems included
- See Consumer Litigation Case Law Summaries, *infra*

❖ Cellular Telephone

- Not landlines; *Meadows v. Franklin Collection Services, Inc.* 414 Fed. Appx. 230 (11th Cir. 2011)
- service “charged for the call”



Consent & the TCPA

Prior Express Consent

Required to be provided before placing or initiating a call

- Automatic telephone dialing system
- Predictive telephone dialing system
- Automatic or pre-recorded voice

Affirmative Defense

- Caller Defendant's Burden

Revocation of Consent

May consent be withdrawn?

- *Gager v. Dell Financial Services*, 727 F. 3d 265 (3rd Cir. 2013) (common law)
- *Osario v. State Farm Bank FSB*, 2014 WL 1258023 (11th Cir. March 28, 2014) (common law)
- *Gutierrez v. Barclay Group*, 2011 WL 579238 (S.D. Cal. Feb 9, 2011) (oral revocation ok)
- *Adamcik v. Credit Control Services, Inc.*, (also allowed oral revocation)
- *Conklin v. Wells Fargo Bank, N.A.*, 2013 WL 6409731 (M.D. Fla. Dec. 9, 2013) (consent revoked by operation of law)
- *But see, Starkey v. Firstsource Advantage, LLC*, 210 WL 2541756 (W.D. N.Y. March 11, 2010) (oral consent not allowed)
- *Saunders v. NCO Financial*, 910 F. Supp. 2d 464 (E.D.N.Y. 2012) (Statute does not provide, therefore consent cannot be withdrawn)



What are You Looking For?

- ❖ Consumer Debt
- ❖ Notice of Attorney Representation Regarding Debt
 - ❖ Or other revocation (i.e., cease & desist, refusal to pay; stop calling me, etc.)
- ❖ Automatically Dialed Telephone Calls or Pre-recorded Voicemails
- ❖ To a Cellular Telephone



Consumer Debt

Obligation arises from a “transaction”

- Not from negligence
- Not from intentional tort
- Not from fine or penalty
- HOA Due? Unsettled, but modern argument is ‘Yes’ provided condo was for personal use and not investment

Primarily from “Personal, household or family use”

- Primarily
- Initial purpose on “one-time” purchase
- Weighing of use on credit lines or revolving credit accounts

Mortgage Notes on Owner Occupied / Family-Use Real Estate? Yes.

NOTE: N.C. Gen. Stat. § 75-50



Notice of Attorney Representation

Oral Representation

- Client advises on debt collection call, post-rep.

Faxes & Letters of Representation

- Attorney/Law firm directed

Notice of Appearance

- Mortgage Foreclosure Lawsuit
- Credit Card / Debt Buyer Lawsuit

Authority to Represent

- Short sale or loan modification

All of the Above = Revocation by Operation of Law

- *Conklin v. Wells Fargo Bank, N.A*



“Robotic” Debt Collection Calls?

Auto-Dialed Calls via “Automatic Telephone Dialing System”

- Pause on answer of call
- Clicks on answer of call
- On Hold message

Automated or Pre-Recorded Voice

- Voicemails
- On Hold message waiting for live representative

Systems must simply have (present) capability of storing numbers

- Predictive dialers
- Store and call numbers without human interaction



Cellular Telephone or Paging Service

- ❖ Paging? See 1991.
- ❖ Cellular telephone service = Cell phones
- ❖ Service Plans Should Not Matter
 - ❖ Unlimited minutes ok
 - ❖ Still “charged” for the service or minutes
- ❖ ***Osario v. State Farm Bank FSB***, 2014 WL 1258023 (11th Cir. March 28, 2014) (The Rule of the Last Antecedent: ‘for which the party is charged for the call’ does not apply to ‘cellular telephone service’; any calls to cellular telephones are governed regardless of plan)



Case Law Summaries



Strict Liability; No Duty to Mitigate

- ***Filichio v. M.R.S. Associates, Inc.***, 2010 WL 4261442 (S.D. Fla. Oct. 19, 2010) (holding that under the TCPA making the calls satisfied the requirements of the statute, it was irrelevant whether recipient answered or was aware of the calls; the statute is strict liability and there was no duty on plaintiff to mitigate damages)

Automatic Telephone Dialing System

- ***Kazemi v. Payless Shoesource, Inc.***, 2010 WL 963225 (N.D. Cal. Mar. 16, 2010) (finding that plaintiff's description of received messages as "formatted in SMS short code licensed to defendants, scripted in an impersonal manner and sent en masse" was sufficient to support the allegation that the messages were sent using an auto-dialer).
- ***Nelson v. Santander***, 931 F.Supp.2d 919 (W.D. Wisc. 2013) (rejecting defendant's argument that plaintiff failed to distinguish between calls through "predictive dialing" vs. calls through "preview dialing" as immaterial, as the question is whether the system used had the "capacity to make automated calls").
- ***Hunt v. 21st Mortg. Corp.***, 2014 WL 426275 (N.D. Ala. Feb. 4, 2014) (noting that in order for a telephone system to be covered by the TCPA, it must have had the capacity, at the time the calls were made, to store or produce numbers using a random or sequential number generator).

Consumer Litigation: Case Law Summaries

ATDS (cont'd)

- ***Stockwell v. Credit Management LP*** (district court dismissed part of consumer complaint because no evidence to controvert defendant caller assertion did not have technology / number generator)

Prior Express Consent: Debt Collection

- By express Congress meant implied?
 - *Rules and Regulations Implementing the TCPA of 1991* (Jan 4 2008)
 - Cellular number provided in the transaction creating the debt; “deemed”
- How far does the consent go?
 - ***Mais v. Gulf Coast Collection Bureau***, 944 F. Supp. 2d 1226 (S.D. Fla. 2013) (separate medical creditor other than hospital to whom number was provided did not have prior express consent)
- Agents of a Principal do have prior express consent
 - *Rules and Regulations Implementing the TCPA of 1991* (Jan 4 2008)



Consumer Litigation: Case Law Summaries

Prior Express Consent: Marketing

- Pre-October 16, 2013: prior express consent
 - Deemed or Express? Caller discretion. Be careful.
- Post October 16, 2013: prior express **written** consent

Prior Express Consent: Informational

- Both pre- and post: Prior express consent
 - Deemed or Express? Caller discretion. Be careful
 - Still **Simon & Schuster**? “consent that is clearly & unmistakably stated.”

Revocation of Prior Express Consent

- **Gager v. Dell Financial Services (2013)** (consent revoked under common law principles; no means no)
- **Osario v. State Farm Bank, F.S.B. (2014)** (consent revoked under common law; no means no)
- **Conklin v. Wells Fargo Bank, NA (2013)** (Revocation by operation of law)
- **Starkey v. First Source Advantage** (writing required; look to FDCPA)



Consumer Litigation: Case Law Summaries

Third Party (i.e., Vicarious) Liability

■ Agency

- ***Desai v. ADT Sec. Services, Inc.*** (2011 WL 2837435 (N.D. Ill. July 18, 2011)) (initially broad enough to include cases where party encouraged or prompted representatives to make calls on its behalf; otherwise, a party could benefit from violations of TCPA with impunity)
- ***Worsham v. Nationwide Ins. Co.***, (138 Md. App. 487 (Md. App. 2001) (independent contractor relationship did not insulate Nationwide from potential liability)
- ***Lary v. VSB Financial Consulting, Inc.*** (910 So. 2d 11280 (Ala. Cir. App. 2005)) (congressional torts like TCPA implicitly include doctrine of vicarious liability unless expressly excluded)

■ “On Behalf of” Liability

- ***In re: Joint Petition filed by Dish Network, LLC, 28 FCC Rcd 6574 (2013)*** (discussion the scope of ‘on behalf of’ and vicarious liability under the TCPA and finding that §227(b) is subject to vicarious liability under the federal common law agency principles).
- ***Thomas v. Taco Bell Corp.***, (879 F. Supp. 2d 1079 (C.D. Cal. 2012) (consumer argued broader standard of liability – on behalf of. Court declined and followed traditional standards of vicarious liability and agency principles).
- ***Mey v. Pinnacle Sec., LLC*** (2012 WL 4009718)N.D. W.Va. Sept. 12, 2012) (noting that the TCPA expressly provides for ‘on behalf of’ liability in §227(c)(5) but does not provide for strict on behalf of liability under §227(b)(3))
- ***Rules and Regulations Implementing the TCPA of 1991 (Jan 4 2008)*** (calls placed by a third party debt collector on behalf of that creditor are treated as if the creditor itself placed the call)



Consumer Litigation: Case Law Summaries

Willful & Knowing: Low Threshold for up to 3X Damages

- TCPA and FCC do not define “willful and knowing”
- ***Sengenberger v. Credit Control Services***, 2010 WL 1791270 (N.D. Ill. May 5, 2010) (found calls willful)
 - Act must be intentional; irrespective of intent to violate law
 - “Caller acting voluntarily and under free will regardless of whether knew was acting in violation of a statute.”
- ***Harris v. World Fin. Network Nat. Bank***, 867 F. Supp. 2d 888 (E.D. Mich. 2012) (trial court award treble damages (\$1,500/call) for auto-dialed calls to cell phone after consumer notified credit card company calling wrong number).

Attorneys’ Fees

- ***Ade of Tampa, Inc. v. Mealcab.com, LLC***, 19 Fla. L. Weekly Supp. 472a (Fla. Cir. Ct. Mar. 6, 2012) (TCPA violation basis for violation of F.S. 501.201 (FDUTPA) as an unfair method of competition)
- ***Conklin v. Well Fargo Bank, N.A.*** (2012) (TCPA and state debt collection statute that prohibited collection by first parties (FCCPA)); See FDCPA, too.
- **N.C. General Statutes, Section 75-16.1** (attorney fee to prevailing upon finding that party charged acted willfully AND unwarranted refusal to fully resolve, or knew or should have known malicious)



Consumer Litigation: Case Law Summaries

Class Actions

- Prior Express (Written) Consent
 - Caller's Burden;
 - Affirmative Defense
- Class Definition, if properly drafted – prior express consent (or lack thereof) will not necessarily save you

Insurance Coverage (Class Actions)

- Per claimant exception (<\$500.00/claim?)
- Willful or knowing conduct exclusion?
 - ***Alea London v. American Home Services, Inc***, 638 F. 3d 768 (11th Cir. 2011). *(case by marketer against insurance carrier for breach of contract; failure to defend and pay claims; insurer prevailed because class TCPA coverage excepted for claim amount and willful exclusion)*
- UDAP or Common Law Tort may trigger coverage



Marketing Calls vs. Informational Calls

New FCC rules do not discuss at length the types of calls

Generally, all calls intended to offer goods or services are “marketing calls”

- Label (i.e., free goods) not controlling
- Offer property, goods, services for sale
- During call or in future

Overlap / Shade of Gray

- Mortgage brokers to clients advising of new rates
- Calls from phone companies to customers regarding new plans
- Credit card companies offering overdraft protection
- All of the above are considered “marketing calls”

Informational Calls: Southwest – flight delay



Inside the Mind of a Consumer Advocate

Initial Inquiry

- *Calls, VMs and Atmosphere*
 - *Frequency*
 - *APVM*
 - *Pauses and Clicks*
 - *Silence then Noise*
- *Caller*

Purpose of Call

- Debt Collection
- Other
 - Marketing (immediate or future benefit?)
 - Informational

Prior Express (Written) Consent Inquiry

- Issue Evaluation
- Client Evaluation
- Set the Trap: Revocation



In (Your) Practice. . .

- ❖ First Steps to Implementing in Consumer Practice
- ❖ Thinking Like a Consumer Lawyer
- ❖ Revoking Consent
 - ❖ Notice(s) of Representation
 - ❖ Cease & Desist / Refusal to Pay
 - ❖ Bankruptcy
- ❖ Educating Your Client
- ❖ Documenting Your Case (i.e., Exhibit A, B, etc.)
- ❖ Seek Help When Needed



Notice of Representation

- Fax of Representation
- Client Name
- Client SSN
- Client Account Number(s)
- Creditor/Debt Collector/Mortgage Servicer Fax Number
- Appropriate Limiting Language
- Spoliation of Evidence Demand
- Client Cellular Telephone Number



Leavengood, Nash, Dauval & Boyle, P.A.
2500 The Green South, Suite 100
St. Petersburg, FL 33703

Tel: 727.327.5326
Fax: 727.327.5326
www.LeavenLaw.com

Fax



To: Collections Representative	Office/Company: Katherine, Down Loan Services, LLC
Fax No: 408-727-5305	Re: Jack R. Brendis Quick SSN#: 206-11-4082; 054-02-3631 Account No.: 24274448 (Chase) Property Address: 2047 Elyria Ave., Largo, FL 33779
From: Ian R. Leavengood, Esq.	Date: 12/17/2013
Number of Pages (including cover sheet): 1	To confirm receipt/missing pages, please call: 727.327.3328

Katherine,

Again, please be aware that this law firm (see above for contact information) represents Jack & Brendis Quick with regard to their debts generally, including the above listed account and any other accounts of debts which you or your agency is attempting to collect from our client(s). Any further direct communication with our client(s) will be in violation of F.S.A. § 559.72(18) which provides in part that:

"[I]n collecting consumer debts, no person shall communicate with the debtor if that person knows that the debtor is represented by an attorney with respect to such debt and has knowledge of . . . such attorney's name and address."

Furthermore, 47 U.S.C. § 227 prohibits making any call using any automatic telephone dialing system or an artificial or pre-recorded voice to any telephone number assigned to a cellular telephone service without prior express consent.

To the extent you are requesting further authorization to discuss Mr. Brendis Quick's matters with this office, we are working with our clients regarding their debts, including the debt referenced above, as well as potential short sale of the property listed above. Limit such time as an authorization is obtained and provided. Please cease calling and communicating with Mr. & Mrs. Quick regarding the debt and property listed above.

Sincerely,
Ian R. Leavengood, Esq.
Leavengood, Nash, Dauval & Boyle, P.A.

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P. 1

x x x Communication Result Report (Dec. 4, 2013 11:48AM) x x x

33

4. 2013 11:48AM

Destination	Pg(s)	Result	Page Not Sent
18634252517	P. 1	OK	

ERROR: THIS IS UP OF LINE FAIL
NO ANSWER
EXCEEDED MAX. [] MAIL PIECE

E 21 Busy
No facsimile connection

Leavengood, Nash, Dauval & Boyle, P.A.
2500 The Green South, Suite 100
St. Petersburg, FL 33703

Tel: 727.327.5326
Fax: 727.327.5326
www.LeavenLaw.com



Fax

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Ian R. Leavengood, Esq.
Leavengood, Nash, Dauval & Boyle, P.A.

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Cease & Desist Letter

Cease & Desist Letter

Dispute Validity of Debt Letter

Client Name

Client SSN

Client Account Number(s)

Cell Phone Number Provided

Appropriate Limiting Language

Mr. Richard Pease
1105 Mt. Pisgah Road
Ft. Meade, FL 33841

May 1, 2014

VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED

Terrace Financial, LLC
ATTN: Collections Department
2550 W. Tryon Road, Suite 240
Charlotte, NC 28217

RE: Debt Collection Calls to Cell Phone Number 727-321-4578

To Whom It May Concern:

I am writing to ask that you please cease all communication with me at the telephone listed above. I dispute the debt that you're trying to collect and I do not wish to be contacted any further.

Please again stop calling me at this telephone number. To the extent that you believe my failure to object to these calls and message implies that it is okay to keep calling, it is not. Any such perceived consent to call me in the manner you have been calling me is forever withdrawn.

Thank you for your attention to this matter.

Sincerely,

Richard Pease



Creditor Harassment Protection Notification

Email to All Clients

- Personalized

Client Notification

Links to CH Protection Center

Client Education

Step-by-Step Instructions

- Self-help
- Attorney help

Organized Process

Next-Step Instructions

The screenshot shows an email notification from Leavengood & Nash, Attorneys at Law. The email is titled "Creditor Harassment Protection Notification" and is addressed to Scott & Christyna Richards. The firm is providing information about creditor harassment protection, including a list of notified creditors and debt collectors. The email also includes a section for "What does this mean to you?" and a "Read More" link. The email footer includes a link to "Are You Receiving Spam?" and a small image of a woman's face.

Web Version | Update preferences | Unsubscribe

LEAVENGOOD & NASH
LEAVENGOOD, NASH, DAUVAL & BOYLE, P.A.
ATTORNEYS AT LAW

LND&B Matter #: 13-00668

Violation Resource Center

Robo-Calls, Pre-Recorded V/Its and Spam Texts: \$\$\$ for You



Creditor Harassment Protection Notification

Dear Scott & Christyna Richards,

We are writing to you to advise you that our law firm has taken the first steps toward assisting you with your financial well-being and a fresh start.

Creditors & Debt Collectors Notified

Recently, our firm has notified the below creditors of our representation of you with regard to the debt you owe them:

- Bank of America Home Loans- Loan #116744626
- Regions- Loan #272400002091

What does this mean to you?

Creditors and debt collectors cannot continue to try and collect a debt directly from you after they have been notified that you have hired an attorney for representation regarding a debt and have your attorneys contact information. The above creditors and debt collectors have now been notified of our representation and have our contact information. Therefore, if you receive ANY further debt collection calls, letters, or periodic billing statements from them, they have violated creditor harassment laws. As a result, you could be entitled to \$1,000.00 or more. To learn more - and help your lawyers help you protect your rights and get a fresh start - [Read More](#)

If you are receiving automatically dialed calls (i.e. Robo-Calls) to your cellular telephone, you could be entitled to \$500.00...PER CALL!!! Pre-recorded voicemails and spam texts could also be worth \$\$\$ to you. Don't miss out [read more](#) to find out how you too can benefit from powerful consumer protection laws!

Are You Receiving Spam

Creditor Harassment Protection Center

Collection Calls & VMs

Collection Letters & Billing Statements

Debt Collection Document Center

Revoking Consent


Robo-Dialed Calls & Spam Texts

The screenshot shows the website for LeavenLaw, Leavengood, Dauval & Boyle, P.A., Attorneys at Law. The page features a search bar at the top left and contact numbers for St. Petersburg (727.327.3328), Clearwater (727.347.7828), Tampa (813.221.3328), and Sarasota (941.366.3328) on the top right. A navigation menu includes Home, Attorney Profiles, Articles & News, About the Firm, Offices, FAQs, Cases, and Contact Us. The main content area is titled "Creditor Harassment Protection Center" and includes a video player with a play button. The video description reads: "At Leavengood, Dauval & Boyle, P.A., we pride ourselves on providing exceptional customer service to our clients at a tremendous value. For those consumer customers who are facing tough financial times and have retained the services of one of our attorneys for either Bankruptcy, Mortgage Foreclosure Defense, Credit Card Defense, Debt Consolidation, Short Sales, or Loan Modification, creditors and debt collectors are prohibited by the FCRA and the FDCPA from continuing to contact you directly in an attempt to collect the debt owed. Instead, they must communicate with and through our office only. Included in ALL of the above service arrangements, Leavengood, Dauval & Boyle, P.A. will save creditor calls for FREE during the time we are assisting you with your distressed debt. Whether it is during the time you are working with our office to gather the needed documents to prepare and file your bankruptcy petition during the time you are helping us defend your mortgage foreclosure case, or while you are working with us to get a loan modification or short sale approved, we will work to make sure that you are not being harassed and that the creditors and debt collectors are both notified of our representation and stop communicating with you (i.e., calls, letters, periodic credit card statements, etc.) in an attempt to collect the debt owed." The page also features a "Counsel for Life" section with a "Click Here" link and a "Free Consultation" section with a "Click Here" link. The footer includes a "Contact Us" link and a "Communications Log" link.

<http://www.leavenlaw.com/Practice-Areas/Creditor-Harassment/Consumer-Protection-Center.aspx>



Collection Communications Log



Collection Communications Log

Client Name: _____ Original date gave LD&B Contact Info: _____
 Client Home Phone #: _____ Client Cell Phone # (s): _____

INSTRUCTIONS:

1. PLEASE IMMEDIATELY WRITE DOWN EVERY COMMUNICATION you have with any creditor/debt collector, whether by letter, phone or voicemail.
2. KEEP THIS LOG NEXT TO YOUR PHONE and take detailed notes of any conversations you have. See #1 below for an example.
3. SAVE EVERY voicemail, message, collection letter, e-mail and/or text message.
4. DON'T THROW ANYTHING AWAY, including the envelopes that the collection letters come in or anything included with the collection letter.
5. PLEASE SEE the back of this log for the script to read to creditors/collectors and a list of common violations.
6. It is very important that you notify each creditor/collector that we represent you. PLEASE FOLLOW THE SCRIPT ON THE BACK.
7. IT IS VERY IMPORTANT TO NOTE WHICH CALLS ARE AUTO-DIALED OR INCLUDE A PRE-RECORDED MESSAGE. Look for the following:
 - a. Any voice that is a machine which asks you to please hold while you are transferred to a live person.
 - b. Any voicemail messages which are pre-recorded and repeated over multiple messages.
 - c. A delay of a few seconds once you answer the call before a live person picks up the other end, and
 - d. A recognizable pattern of calls, such as calls every day at exactly the same time.

DETAILS OF THE CALL:						
Date of Call? (MM/DD/YY)	Time of Call? (00:00 pm)	Telephone Number Calling From?	Caller's Name and Company?	Call to your cell phone?	Auto-Dial? (see #7 above)	What Did Collector Say? Did They Say They Were a Debt Collector? Any Threats? Profanity? Harassment? Threaten Legal Action? Call to Friends, Neighbors, or Other Family Members? (Use as many lines or pages as needed)
1. 6/12/13	9:24 am	800-669-0102	Nancy from Bank of America	Yes	Yes	I received an auto-dialed call to my cell phone from BOA trying to collect on my mortgage. I read her the script on the back; however, Nancy said that the collection calls would continue until I gave her a bankruptcy case number.
2.						
3.						
4.						
5.						
6.						
7.						
8.						

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Common Sense approach

Easy to Follow & Use

Examples of Unlawful Conduct Provided

Personalized Script Provided

Verification of Representation provided

- Consumer Protection Hotline: (727) 362-4922
- representation@leavenlaw.com



Mitigation is Over, Now File Suite

- ❖ TCPA contemplated in small claims court
- ❖ However, Federal Question Juris.
 - ❖ *Mims v. Arrow Financial Services, LLC*, 421 Fed. Appx. 920 (U.S. 2012)
- ❖ Companion Violation
 - ❖ FDCPA
 - ❖ N.C. Deceptive Trade Practices Act
 - ❖ N.C. Debt Collection Act
- ❖ Healthy (Potential) Damages AND basis for Attorneys' Fees & Costs
- ❖ Great leverage, great advocacy & great profitability

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

BROOKE DUBBELD,
an individual, Case No.:

Plaintiff(s),

v.

CAPITAL ONE SERVICES, LLC,
a foreign limited liability company, and
NCO FINANCIAL SYSTEMS, INC.
a foreign corporation, COMPLAINT
(Unlawful Debt Collection
Practices)

Defendant(s).

VERIFIED COMPLAINT

COMES NOW, Plaintiff, **BROOKE DUBBELD** (hereinafter, "Plaintiff"), by and through the undersigned counsel, and sues Defendant, **PROFESSIONAL NCO FINANCIAL SYSTEMS, INC.** (hereinafter, "Defendant"), and alleges:

I. INTRODUCTION AND PRELIMINARY STATEMENT

This is an action for damages brought by an individual consumer for Defendants' violations of the Florida Consumer Collection Practices Act, Chapter 559, Florida Statutes (hereinafter, the "FCCPA"), the Telephone Communication Protection Act, 47 U.S.C. 227 (hereinafter, the "TCPA"), and the Fair Debt Collection Practices Act, 15 U.S.C. 1692a, et seq. (hereinafter, the "FDCPA") and for declaratory judgment and injunctive relief in equity.

II. JURISDICTION AND VENUE

1. This Court has federal question subject matter jurisdiction over the FDCPA claims under 28 U.S.C. §§1331, 1337 and 15 U.S.C. §1692k(d). The Court has supplemental jurisdiction over the FCCPA and TCPA claims under to 28 U.S.C. §1367,



Contact Information

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