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IN THE UNITED STATES DISTRICT COURT FOR  
THE MIDDLE DISTRICT OF FLORIDA  
FORT MYERS DIVISION

CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS, FLORIDA

LARRY HARRINGTON,

Plaintiff

2:15-cv-322-FTM-38DNF

Case No. \_\_\_\_\_

vs.

ROUNDPOINT MORTGAGE  
SERVICING CORPORATION and  
MULTIBANK 2010-1 SFR VENTURE,  
LLC

JURY DEMANDED

Defendants

**PLAINTIFF LARRY HARRINGTON'S ORIGINAL COMPLAINT AND  
DEMAND FOR JURY TRIAL**

1. Plaintiff Larry Harrington (“Plaintiff” or “Harrington”) brings this action to enforce the consumer-privacy provisions of the Telephone Consumer Protection Act (“TCPA”), a federal statute enacted in 1991 in response to widespread public outrage about the proliferation of intrusive, nuisance telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012). He also brings the action under the Florida Consumer Collection Practices Act, sections 559.55, et seq., Florida Statutes (hereafter “FCCPA”).

2. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Id.* at 744. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them. Thus, and as applicable here, Section 227(b)(1)(A)(iii) of the TCPA specifically prohibits the making of “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 ... to any telephone number assigned to a ... cellular telephone service[.]”

3. The TCPA prohibits calls to a cell phone made with an auto dialer or with a prerecorded voice unless prior express consent is given. Plaintiff never so consented.

4. RoundPoint Mortgage Servicing Corporation (“**RoundPoint**”) called Plaintiff’s cell phones on hundreds/thousands of occasions using an auto dialer and a pre-recorded voice. Because Plaintiff had not given his consent to receive calls from RoundPoint, these calls violated the TCPA.

5. This is the exact scenario Congress attempted to prevent in enacting the TCPA. Plaintiff now seeks this Court’s intervention and help in attempting to prohibit this unlawful conduct.

6. Upon belief and information, Plaintiff contends that RoundPoint’s practices of violating the TCPA are widespread. Plaintiff intends to propound discovery to RoundPoint identifying other individuals who have suffered similar violations.

7. RoundPoint’s conduct is also in violation of the FCCPA.

#### **Parties**

8. Plaintiff Larry Harrington is a resident of the State of Florida and this District.

9. Plaintiff is a debtor and/or alleged debtor as that term is defined by section 559.55(2), Florida Statutes.

10. Plaintiff is the "called party" with respect to the calls placed to his cellular telephone number(s): 239-470-5307, 239-470-3995, 239-770-1523 and 239-770-2717.

11. Plaintiff is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3).

12. Defendant RoundPoint is a servicer of mortgage loans. RoundPoint regularly conducts business in Florida and maintains its primary business location at 5032 Parkway Plaza Boulevard, Charlotte, NC 28217.

13. Defendant Multibank 2010-1 SFR Venture, LLC ("**MultiBank**") is the alleged owner of the Mortgage as defined below and regularly conducts business in Florida.

14. At all times material hereto, the complained-about conduct of RoundPoint (improper telephone calls) was on behalf of MultiBank.

#### **Jurisdiction & Venue**

15. The Court has federal question subject matter jurisdiction over these TCPA claims. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012). It also has jurisdiction pursuant to 15 U.S.C. § 1692k(d) and/or pursuant to 28 U.S.C. § 1367 for pendant state law claims.

16. Venue is proper because the Plaintiff is a resident of this District.

#### **The Telephone Consumer Protection Act**

17. Advances in telecommunications technology have provided benefits to American society. But those benefits are not cost-free; new technologies bring with them new ways to intrude upon individual privacy and waste the time and money of consumers. The 1980s and 90s brought an explosion of abuses of telephone and facsimile technology, including the use of auto-dialers to clog telephone lines with unwanted calls, "robocalls" with unsolicited or unwanted, prerecorded messages, and "junk faxes" that consume the recipients' paper and ink and interfere with the transmission of legitimate messages.

18. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy [.]” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

19. Through the TCPA, Congress outlawed telemarketing via unsolicited automated or pre-recorded telephone calls (“robocalls”), finding:

[R]esidential telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.

....

Banning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call[,] . . . is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

*Id.* § 2(10) and (12); *See also Mims*, 132 S. Ct. at 745.

20. The TCPA regulates, among other things, the use of automated telephone equipment, or “auto-dialers.” Specifically, the plain language of section 227(b)(1)(A)(iii) prohibits the use of auto-dialers to make any call to a wireless number in the absence of an emergency or the prior express consent of the called party.

21. According to findings by the FCC, the agency Congress vested with authority to issue regulations implementing the TCPA, such calls are prohibited because, as Congress found, automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and inconvenient. The FCC also recognized that wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used. *See Rules and Regulations Implementing the Telephone*

*Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).

22. On January 4, 2008, the FCC released a Declaratory Ruling wherein it confirmed that autodialed and prerecorded message calls to a wireless number by a creditor (or on behalf of a creditor) are permitted only if the calls are made with the “prior express consent” of the called party. *See In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991* (“FCC Declaratory Ruling”), 23 F.C.C.R. 559, 23 FCC Rcd. 559, 43 Communications Reg. (P&F) 877, 2008 WL 65485 (F.C.C.) (2008).

23. The FCC “emphasize[d] that prior express consent is deemed to be granted only if the wireless number was provided by the consumer to the creditor, and that such number was provided during the transaction that resulted in the debt owed.” *See FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65.

24. In the same Declaratory Ruling, the FCC emphasized that both the creditors and third party debt collector may be held liable under the TCPA for debt collection calls. (“A creditor on whose behalf an autodialed or prerecorded message call is made to a wireless number bears the responsibility for any violation of the Commission’s rules. Calls placed by a third party collector on behalf of that creditor are treated as if the creditor itself placed the call... A third party collector may also be liable for a violation of the Commission’s rules.”)

#### **Factual Allegations**

25. At all times material hereto, RoundPoint did transact business in Lee County, Florida, as a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6) and/or section 559.55(7), Florida Statutes. RoundPoint sought to collect an alleged debt from Plaintiff that

arose from a transaction allegedly incurred for personal, family or household purposes and is therefore a "consumer debt."

26. At all times material hereto, RoundPoint was the servicer of the Mortgage (as hereinafter defined) which is the subject of the unlawful collection activity at issue herein.

27. As described herein, RoundPoint employed business practices resulting in intentional harassment and abuse of Plaintiff and engaged in patterns of outrageous, abusive and harassing conduct by and through its agents and representatives in an effort to collect the Mortgage loan debt from Plaintiff.

28. Within the four (4) year period preceding the filing of this action, RoundPoint intentionally harassed and abused Plaintiff and his family, on numerous occasions by its agents and representatives calling Plaintiff's cellular telephone numbers and residential telephone number several times during one day, up to five (5) times a day and more, and on back to back days, with such frequency as can reasonably be expected to harass.

29. RoundPoint has engaged in conduct in violation of the TCPA and the FCCPA, and constituting intentional harassment and abuse of Plaintiff, by and through its agents and representatives, on numerous occasions within the four (4) year period preceding the filing of this action.

30. On or about November 26, 2003, Plaintiff secured a home mortgage (the "Mortgage") from Riverside Bank of the Gulf Coast ("Riverside"). Plaintiff did not give Riverside his cellular number(s) when Plaintiff secured the Mortgage. At no time did Plaintiff give Riverside his cellular number(s) or permission to call his cellular number(s).

31. Upon information and belief, Multibank 2010-1 SFR Venture, LLC (“**MultiBank**”) allegedly acquired the Mortgage.

32. MultiBank is the alleged owner of the Mortgage and is signatory to that certain Servicing Agreement by and between Roundpoint Ventures I, LLC as Manager of MultiBank and RoundPoint dated April 1, 2010.

33. Upon information and belief MultiBank hired RoundPoint to service the Mortgage.

34. Plaintiff had no relationship with MultiBank or RoundPoint other than to send his Mortgage payments to MultiBank through RoundPoint.

35. In April of 2010 RoundPoint began collection efforts on the Mortgage and began a process of harassing phone calls to Plaintiff. RoundPoint’s efforts were on behalf of MultiBank.

36. During the period beginning in approximately April of 2010 and ending in approximately May of 2014 RoundPoint called Plaintiff on a repeated basis. Calls were made to Plaintiff’s residential number and Plaintiff’s cell numbers. On information and belief the purpose for these calls was debt collection.

37. Calls were made by RoundPoint to Plaintiff at the following cellular numbers (collectively the “**Cell Phone Numbers**”):

- a. 239-470-5307
- b. 239-470-3995
- c. 239-770-1523
- d. 239-770-2717

38. Plaintiff is the subscriber on the account for the Cell Phones Numbers and is charged for calls made to the Cell Phones Numbers via a monthly charge. At all material times Plaintiff was/is the subscriber to the cell phone service associated with each of the Cell Phone Numbers and the cellular service provider for the Cell Phone Numbers was either Verizon or Metro PCS. The cellular service provider initially was Verizon and then changed to Metro PCS.

39. RoundPoint made multiple calls on every day other than legal holidays to Plaintiff's cell phones. On many days RoundPoint called each of the Cell Phones Numbers on multiple occasions.

40. RoundPoint placed automated calls to Plaintiff's cell phones using an automatic telephone dialing system ("ATDS") "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 as specified by 47 U.S.C. § 227(a)(1)."

41. When the calls connected, there was an audible click from the receiver. After a significant pause, a message was left by RoundPoint either by a live person or a prerecorded voice. As such, the calls at issue were made using an automatic telephone dialing system, equipment having the capacity to dial Plaintiff's number without human intervention.

42. The facts in the preceding paragraph indicate the call was placed through an "automatic telephone dialing system" as defined in 47 U.S.C. § 227(a)(1).

43. On many of the calls RoundPoint left a message consisting of a prerecorded voice. Plaintiff listened to the message and recognized that it was not a live person leaving the message but an automated voice recording.



44. The facts in the preceding paragraph indicate the call was placed using an “artificial or prerecorded voice.”

45. Plaintiff has not provided RoundPoint with the Cell Phone Numbers, his cellular telephone number(s) or permission to call his cellular number(s) or the Cell Phone Numbers.

46. None of the calls at issue were placed by RoundPoint to Plaintiff’s Cell Phone Numbers for “emergency purposes” as specified by the TCPA, 47 U.S.C. §227 (b)(1)(A).

47. Beginning with the date four years before the filing of this Complaint, RoundPoint placed thousands of phone calls to Plaintiff’s cellular telephone number(s) using an auto dialer or with a prerecorded voice in an effort to collect the alleged debt on the Mortgage, and the calls continued through at least May of 2014.

48. On information and belief RoundPoint obtained Plaintiff’s cellular numbers from a credit report which RoundPoint accessed or through a method known as “skip-tracing,” whereby collectors and creditors obtain phone numbers by conducting inquiries upon consumer credit reports or other public record searches.

### **Legal Claims**

#### **Count One Against RoundPoint and MultiBank:**

##### **Violation of the TCPA’s provisions prohibiting auto-dialed and prerecorded message calls to cell phones**

49. Plaintiff incorporates the allegations from all previous paragraphs as if fully set forth herein.

50. RoundPoint repeatedly placed non-emergency telephone calls to Plaintiff’s

cellular telephone number(s) using an automatic telephone dialing system or prerecorded or artificial voice without Plaintiff's prior express consent in violation of the federal law, including 47 U.S.C. §227(b)(1)(A)(iii). Thus, RoundPoint violated the TCPA by initiating a telephone call using an automated dialing system or prerecorded voice to Plaintiff's telephone numbers assigned to a cellular telephone service.

51. The calls made by RoundPoint were made on behalf of MultiBank.

52. Plaintiff is informed, believes and alleges that RoundPoint's and MultiBank's violations of the TCPA described above were done willfully and knowingly.

53. The willful and knowing nature of RoundPoint's and MultiBank's conduct is exhibited in part by the following facts:

a. RoundPoint and MultiBank are large corporations with access to legal advice through its own regulatory department and outside employment counsel, and there is no contemporaneous evidence that it determined that its conduct was lawful;

b. RoundPoint and MultiBank knew or had reason to know that its conduct was inconsistent with published FCC guidance interpreting the TCPA and the plain language of the statute;

c. RoundPoint and MultiBank knew that Plaintiff had not consented to calls to his cell phone as RoundPoint only received Plaintiff's cell phone from the credit report which it illegally accessed;

d. Upon information and belief RoundPoint and MultiBank knew that permission was required before RoundPoint could call Plaintiff's cell phone using an auto-dialer or a prerecorded voice; and

e. Upon information and belief RoundPoint and MultiBank were aware of the requirements of the TCPA, but choose to not to comply with those requirements.

54. Plaintiff is entitled to damages of \$1,500 per violation pursuant to 47 U.S.C. §227(b)(3) because the violations were willful and knowing violations of the TCPA.

**Count Two Against RoundPoint:**

**Violation of the FCCPA**

55. Plaintiff re-alleges and incorporates by reference the allegations of the previous paragraphs, as if fully set forth herein.

56. At all times material to this action RoundPoint was and is subject to and must abide by the law of Florida, including section 559.72, Florida Statute.

57. RoundPoint engaged in an act or omission prohibited under section 559.72(7), Florida Statutes, by willfully communicating with Plaintiff or any member of his family with such frequency as can reasonably be expected to harass Plaintiff.

58. RoundPoint engaged in an act or omission prohibited under section 559.72(7), Florida Statutes, by willfully engaging in other conduct which can reasonably be expected to abuse or harass Plaintiff.

59. RoundPoint's actions have directly and proximately resulted in Plaintiff's sustaining of damages as described by section 559.77, Florida Statutes, including, but not limited to: statutory damages, actual damages in the form of emotional pain and suffering, fear, worry, embarrassment, humiliation and loss of the capacity for the enjoyment of life; and attorney fees, interest and costs.

**Relief Sought**

60. Plaintiff requests the following relief:

a. That RoundPoint and MultiBank be found jointly and severally liable under the TCPA and Plaintiff be awarded statutory damages of \$500 for each negligent violation of the TCPA, and \$1,500 for each willful/knowing violation of the TCPA;

b. That RoundPoint be found liable under the FCCPA and Plaintiff be awarded statutory damages; actual damages, including but not limited to, emotional pain and suffering, fear, worry, embarrassment, humiliation and loss of the capacity for the enjoyment of life; punitive damages; and attorney fees, interest and costs under the FCCPA; and

c. Plaintiff be granted other relief as is just and equitable under the circumstances.

**Plaintiff requests a jury trial as to all claims of the complaint so triable.**

Respectfully submitted,

By: /s/ Chris R. Miltenberger  
Chris R. Miltenberger  
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