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Ophelia Augustine

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**OPHELIA AUGUSTINE,
INDIVIDUALLY AND ON
BEHALF OF ALL OTHERS
SIMILARLY SITUATED,**

Plaintiff,

v.

CREDIT ONE BANK, N.A.

Defendant.

LAW OFFICE OF DANIEL G. SHAY

Daniel G. Shay, Esq. (250548)
danielshay@tcpafdcpa.com
409 Camino Del Rio South, Ste 101B
San Diego, CA 92108
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Case No.: '18CV0184 BEN WVG

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF PURSUANT
TO THE TELEPHONE CONSUMER
PROTECTION ACT, 47 U.S.C. § 227,
ET SEQ.**

[JURY TRIAL DEMANDED]

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INTRODUCTION

1. Plaintiff OPHELIA AUGUSTINE (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of CREDIT ONE BANK, N.A. (hereinafter “Defendant”) in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.
2. The TCPA was designed to prevent calls and text messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.”
3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

Id. at § 12;

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1 4. Congress also specifically found that “the evidence presented to the
2 Congress indicates that automated or prerecorded calls are a nuisance and an
3 invasion of privacy, regardless of the type of call...” *Id.* at §§ 12-13.

4 5. Further, the FCC has issued rulings and clarified that consumers are entitled
5 to the same consent-based protections for text messages as they are for calls
6 to wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946,
7 952 (9th Cir. 2009) (The FCC has determined that a text message falls
8 within the meaning of “to make any call” in 47 U.S.C. § 227(b)(1)(A));
9 *Toney v. Quality Res., Inc.*, 75 F. Supp. 3d 727, 734 (N.D. Ill. 2014)
10 (Defendant bears the burden of showing that it obtained Plaintiff's prior
11 express consent before sending her the text message).

12
13 **JURISDICTION AND VENUE**

14 6. This Court has federal question jurisdiction because this case arises out of
15 violation of federal law 47 U.S.C. §227(b).

16 7. Venue is proper in the United States District Court for the Southern District
17 of California pursuant to 28 U.S.C. § 1391 for the following reasons: (i)
18 Plaintiff resides in the City of San Diego, County of San Diego, State of
19 California which is within this judicial district; (ii) the conduct complained
20 of herein occurred within this judicial district; and, (iii) many of the acts and
21 transactions giving rise to this action occurred in this district because
22 Defendant:

23 (a) is authorized to conduct business in this district and has
24 intentionally availed itself of the laws and markets within this
25 district;

26 (b) does substantial business within this district;

27 (c) is subject to personal jurisdiction in this district because it has
28 availed itself of the laws and markets within this district; and,

(d) the harm to Plaintiff occurred within this district.

PARTIES

8. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the City of San Diego, County of San Diego, State of California. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(3).

9. Defendant is, and at all times mentioned herein was, a national banking association, organized and existing under the laws of the State of Nevada with a principal place of business located in Las Vegas, Nevada 89119 in Clark County, and is a “person,” as defined by 47 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California and in the County of San Diego, and within this judicial district.

FACTUAL ALLEGATIONS

10. Plaintiff alleges that at all times relevant herein Defendant conducted business in the State of California, County of San Diego, and within this judicial district.

11. Sometime prior to December of 2016, Plaintiff allegedly incurred debts to Defendant for an account ending in 9942 and an account ending in 4396.

12. Beginning around June of 2017, Defendant initiated multiple telephonic communications to Plaintiff’s cellular telephone ending in “9532”. Plaintiff found these communications excessive, inconvenient and harassing.

13. Specifically, Defendant sent Plaintiff automated text messages regarding the alleged debt for the account ending in 9942 on the following dates: June 16, 2017; June 17, 2017; June 18, 2017; June 19, 2017; June 20, 2017; June 21, 2017; June 22, 2017; June 23, 2017; June 24, 2017; June 25, 2017; June 26, 2017; June 27, 2017; June 28, 2017, June 29, 2017, and June 30, 2017.

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1 14.Plaintiff subsequently retained the legal services of Law Office of Daniel G.
2 Shay (“Attorney”).

3 15.On June 16, 2017, Attorney, sent Defendant Cease and Desist Letters on
4 behalf of Plaintiff, containing TCPA Revocation of Consent language
5 (“Cease and Desist Letter”) by facsimile and US mail.

6 16.From June 16, 2017 to June 30 2017, Defendant sent Plaintiff at least sixteen
7 text messages from the short code “207-57” to Plaintiff’s mobile phone
8 ending in “9532”.

9 17.These telephonic communications constituted telephone solicitations, as
10 defined by 47 U.S.C. § 227(a)(4).

11 18.Defendant’s text messages constituted “calls” that was not for emergency
12 purposes, as defined by 47 U.S.C. § 227(b)(1)(A)(i).

13 19.Defendant’s text messages were placed to a telephone number assigned to a
14 cellular telephone service for which Plaintiff incurs a charge for incoming
15 text messages pursuant to 47 U.S.C. § 227(b)(1).

16 20.Defendant did not have prior written express consent to send text messages
17 Plaintiff and make these telephone solicitations, as defined by 47 U.S.C. §
18 227(a)(4).

19 21.On information and belief, Plaintiff believes that Defendant used an
20 “automatic telephone dialing system” (or “ATDS”), as defined by 47 U.S.C.
21 § 227(a)(1) to repeatedly send automated text messages to Plaintiff.

22 22.This ATDS has the capacity to store or produce telephone numbers to send
23 text messages, using a random or sequential number generator.

24 23.These telephone communications by Defendant, or its agent, violated 47
25 U.S.C. § 227(b)(1).

26 24.Through this action, Plaintiff suffered an invasion of a legally protected
27 interest in privacy, which is specifically addressed and protected by the
28 TCPA.

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1 25.Plaintiff was personally affected because Plaintiff was frustrated and
2 distressed that Defendant harassed Plaintiff with text messages using an
3 ATDS.

4 26.Defendant's telephone text messages forced Plaintiff and class members to
5 live without the utility of their cellular phones by forcing Plaintiff and class
6 members to silence their cellular phones, read the incoming messages,
7 and/or block incoming numbers.

8 27.Through the aforementioned conduct, Defendant has violated 47 U.S.C.
9 § 227 et seq.

10 **CLASS ACTION ALLEGATIONS**

11 28.Plaintiff brings this action on behalf of herself and on behalf of all others
12 similarly situated (“the Class”).

13 29.Plaintiff represents, and is a member of the Class, consisting of:

14 All persons within the United States who received any
15 text messages from Defendant or their agent/s and/or
16 employee/s, not sent for emergency purposes, to said
17 person’s cellular telephone made through the use of any
18 automatic telephone dialing system within the four years
19 prior to the filing of this Complaint.

20 30.Defendant and its employees or agents are excluded from the Class.
21 Plaintiff does not know the number of members in the Class, but believes the
22 Class members number in the hundreds of thousands, if not more. Thus, this
23 matter should be certified as a Class action to assist in the expeditious
24 litigation of this matter.

25 31.Plaintiff and members of the Class were harmed by the acts of Defendant in
26 at least the following ways: Defendants, either directly or through its agents,
27 illegally contacted Plaintiff and the Class members via their cellular
28 telephones by using an ATDS, thereby causing Plaintiff and the Class
members to incur certain cellular telephone charges or reduce cellular

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1 telephone time for which Plaintiff and the Class members previously paid,
2 and invading the privacy of said Plaintiff and the Class members. Plaintiff
3 and the Class members were damaged thereby.

4 32. This suit seeks only damages and injunctive relief for recovery of economic
5 injury on behalf of the Class, and it expressly is not intended to request any
6 recovery for personal injury and claims related thereto. Plaintiff reserves the
7 right to expand the Class definition to seek recovery on behalf of additional
8 persons as warranted as facts are learned in further investigation and
9 discovery.

10 33. The joinder of the Class members is impractical and the disposition of their
11 claims in the Class action will provide substantial benefits both to the parties
12 and to the court. The Class can be identified through Defendants' records or
13 Defendants' agents' records.

14 34. There is a well-defined community of interest in the questions of law and
15 fact involved affecting the parties to be represented. The questions of law
16 and fact to the Class predominate over questions which may affect
17 individual Class members, including the following:

- 18 a) Whether, within the four years prior to the filing of this Complaint,
19 Defendant or its agents initiated any telephonic communications to the
20 Class (other than a message made for emergency purposes or made
21 with the prior express consent of the called party) to a Class member
22 using any automatic dialing to any telephone number assigned to a
23 cellular phone service;
- 24 b) Whether Defendant can meet its burden of showing it obtained prior
25 express consent (i.e., consent that is clearly and unmistakably stated);
- 26 c) Whether Defendant's conduct was knowing and/or willful;
- 27 d) Whether Plaintiff and the Class members were damaged thereby, and
28 the extent of damages for such violation; and

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1 e) Whether Defendants and its agents should be enjoined from engaging
2 in such conduct in the future.

3 35. As a person that received at least one telephonic communication from
4 Defendant's ATDS without Plaintiff's prior written express consent,
5 Plaintiff is asserting claims that are typical of the Class. Plaintiff will fairly
6 and adequately represent and protect the interests of the Class in that
7 Plaintiff has no interests antagonistic to any member of the Class.

8 36. Plaintiff and the members of the Class have all suffered irreparable harm as
9 a result of the Defendants' unlawful and wrongful conduct. Absent a class
10 action, the Class will continue to face the potential for irreparable harm. In
11 addition, these violations of law will be allowed to proceed without remedy
12 and Defendants will likely continue such illegal conduct. Because of the
13 size of the individual Class member's claims, few, if any, Class members
14 could afford to seek legal redress for the wrongs complained of herein.

15 37. Plaintiff has retained counsel experienced in handling class action claims
16 and claims involving violations of the Telephone Consumer Protection Act.

17 38. A class action is a superior method for the fair and efficient adjudication of
18 this controversy. Class-wide damages are essential to induce Defendants to
19 comply with federal and California law. The interest of Class members in
20 individually controlling the prosecution of separate claims against
21 Defendants is small because the maximum statutory damages in an
22 individual action for violation of privacy are minimal. Management of these
23 claims is likely to present significantly fewer difficulties than those
24 presented in many class claims.

25 39. Defendant has acted on grounds generally applicable to the Class, thereby
26 making appropriate final injunctive relief and corresponding declaratory
27 relief with respect to the Class as a whole.

28 40.

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FIRST CAUSE OF ACTION
NEGLIGENT VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. The foregoing acts and omissions of Defendant constitutes numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

43. As a result of Defendant’s negligent violations of 47 U.S.C. § 227 et seq, Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

44. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

SECOND CAUSE OF ACTION
KNOWING AND/OR WILLFUL VIOLATIONS OF THE
TELEPHONE CONSUMER PROTECTION ACT
47 U.S.C. § 227 ET SEQ.

45. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

46. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

47. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227 et seq, Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

1 48.Plaintiff and the Class are also entitled to and seek injunctive relief
2 prohibiting such conduct in the future.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff and the Class Members pray for judgment as
5 follows:

- 6 • Certifying The Class as requested herein;
- 7 • Providing such further relief as may be just and proper.

8 In addition, Plaintiff and The Class Members pray for further judgment as
9 follows:

10
11
12
13 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
14 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 15 • As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),
16 Plaintiff seeks, for herself and each Class member \$500.00 in statutory
17 damages, for each and every violation, pursuant to 47 U.S.C.
18 § 227(b)(3)(B).
- 19 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
20 conduct in the future.
- 21 • Any other relief the Court may deem just and proper.

22 **SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF**
23 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 24 • As a result of Defendant’s knowing and/or willful violations of 47 U.S.C.
25 § 227(b)(1), Plaintiff seeks for herself and each Class member \$1,500.00
26 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
27 § 227(b)(3)(B).

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- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

49. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 25, 2018

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: s/ Abbas Kazerounian
 ABBAS KAZEROUNIAN, ESQ.
 AK@KAZLG.COM
 ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Ophelia Augustine, Individually and on Behalf of All Others Similarly Situated

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Abbas Kazerounian, Esq. (249203) Kazerouni Law Group 800-400-6808 245 Fischer Avenue, Unit D1, Costa Mesa, CA 92626

DEFENDANTS

Credit One Bank, N.A.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'18CV0184 BEN WVG

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. §§ 227 et seq. ("TCPA")
Brief description of cause: Defendant violated the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 01/26/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Credit One Bank Accused of Violating Consumer's Privacy with Illegal Text Messages](#)
