

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION**

ANGELA MCNEAL, on behalf of herself and  
all others similarly situated,

Plaintiff,  
v.

COMENITY BANK,

Defendant.

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CASE NO.:

**CLASS ACTION**

**JURY TRIAL DEMANDED**

**CLASS ACTION COMPLAINT**

1. Plaintiff, Angela McNeal, individually and on behalf of all others similarly situated, asserts Comenity Bank (“Comenity”) “robocalled” her in violation of the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* (“TCPA”) and Invasion of Privacy (“IOP”).

2. Comenity has a corporate policy of repeatedly contacting family and friends of debtors to leave supposedly “urgent messages” for the alleged debtor, using this as a tool to humiliate and embarrass alleged debtors as well as to intentionally cause aggravation and annoyance to their relatives and friends.

3. Harassment of family members and friends is not a novel form of debt collection abuse by any means. Indeed, Comenity is notable for having established an entire department set up to “skip trace” or otherwise track down family members and friends of alleged debtors, just so it can illegally roblast abusive and deceptive calls to them.

4. As is further explained below, Comenity’s illegal tactics are another reason why robocalls continue to be the #1 complaint in America.

## INTRODUCTION

5. In 1991, Congress enacted the TCPA because of the abuses of automatic telephone dialers.

6. Senator Hollings, the TCPA's sponsor, described these calls as “**the scourge of modern civilization**” 137 Cong. Rec. 30, 821 (1991).

7. Today, this scourge has become even worse than anyone ever imagined in 1991.

8. In May of 2019, Americans were bombarded with a shocking 5.2 *billion* robocalls—an increase by an incredible 370% just since December 2015.<sup>1</sup>

9. Recently, the 4<sup>th</sup> Circuit in *Krakauer v. Dish L.L.C.*, No. 18-1518, 2019 WL 2292196 (4th Cir. May 30, 2019) rendered a compelling and thoughtful opinion which illustrates in no uncertain terms why these TCPA case can and should be handled on a class wide basis, holding:

Given the remedial purpose of the TCPA, it is no surprise that its cause of action would be conducive to class-wide disposition. In enacting the law, Congress sought to deter an activity that, while pernicious and disruptive, does not trigger extensive liability in any single case. Since few individuals would have an incentive to bring suit, no matter how frustrated they were with the intrusion on their privacy, the TCPA opted for a model that allows for resolution of issues without extensive individual complications. (p. 18)

The TCPA was enacted to solve a problem. Simply put, people felt almost helpless in the face of repeated and unwanted telemarketing calls. S. Rep. No. 102-178, at 1-2 (1991). Congress responded with an Act that featured a combination of public and private enforcement, allowing suits both to enjoin intrusive practices and deter future violations through money damages. The features of the private right of action in § 227(c)(5), whether statutory damages or strict liability, evince an intent by Congress to allow consumers to bring their claims at modest personal expense. These same features

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<sup>1</sup> YouMail Robocall Index, available at <http://RobocallIndex.com/>

also make TCPA claims amenable to class action resolution. Dish's arguments, if accepted, would contort a simple and administrable statute into one that is both burdensome and toothless. It would be dispiriting beyond belief if courts defeated Congress' obvious attempt to vindicate the public interest with interpretations that ignored the purpose, text, and structure of this Act at the behest of those whose abusive practices the legislative branch had meant to curb. (p. 33)

This will not happen. Class adjudication is complicated, and getting it right requires a careful parsing of the claims and the evidence from the start. It also requires striking a balance between efficient administration and fairness to all those affected, whether they be the class members, the defendants, or absent parties who are nonetheless bound by the judgment. The proceedings below reflected just the measured and thorough approach that we might hope for in such demanding situations. (*Id.*)

10. “[T]he legislative intent behind the TCPA supports the view that class action is the superior method of litigation. ‘[I]f the goal is to **remove the scourge**’ from our society, it is unlikely that individual suits would deter large entities as effectively as aggregated class actions and that individuals would be motivated ... to sue in the absence of the class action vehicle.” [emphasis added] *Krakauer v. Dish Network L.L.C.*, 311 F.D.R. 384, 400 (M.D.N.C. May 22, 2017).

11. Comenity is not the only one of these “large entities” that clearly needs to be stopped, but also bears the dubious distinction of perhaps being the most abusive robocalling debt collector in the country.

12. Comenity recently settled the TCPA class action, *Carrie Couser v. Comenity Bank, et al*, 3:12-cv-02484-MMA-BGS, for \$8,475,000 settlement, and in doing so, specifically carved out what it referred to as “wrong numbers”. These “wrong numbers” are at issue on this case. However, these are not really “wrong” numbers, they are in fact the exact right number Comenity

intended to call. They would be more accurately labeled “illegal numbers” robocalled without express consent.

13. The *Couser* class action has not stopped Comenity from breaking the law; indeed, it appears to have emboldened it into assuming it can continue to break the law and get away with it.

14. As suggested in the *Krakauer* case, individual suits have provided no deterrence whatsoever against serial TCPA violators like Comenity, as evidenced by the over 100 individual lawsuits against Comenity in the last few years.

15. Comenity, as a serial violator of the TCPA, and has settled hundreds of TCPA lawsuits, including those in arbitration and handled pre-suit. Comenity pays “hush-money” to their individual victims of robo-harassment that are aware enough of their rights to sue it, and then forces these persons to sign confidentiality agreements. Comenity in essence uses this as a way to continue to break the law and get away with it.<sup>2</sup>

16. Comenity’s business model in making these types of calls puts profits over people. This form of abuse is so lucrative that individual settlements can be made without making a significant dent in the profits inherent to the abuse.

17. Comenity Bank is one of the top five companies with the most debt collection complaints in 2017 according to an analysis completed by the National Consumer Law Center (“NCLC”) using data from the Federal Trade Commission (“FTC”). Please see Exhibit A attached hereto this Complaint.

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<sup>2</sup> This information will be obtained through discovery and will assist this Court in determining the willful and knowing violation of the TCPA.

18. Comenity has been ordered to turn over the prior complaints made by their own customers as discovery in another lawsuit. See *Ehrlich v. Comenity Capital Bank, a subsidiary of Comenity LLC*, (S.D. Fla. August 07, 2017) attached as Exhibit B.

19. The TCPA was enacted to prevent companies like Comenity from invading American citizens' privacy and making illegal robocalls.

20. Congress enacted the TCPA to prevent real harm. Congress found that "automated or pre-recorded calls are a nuisance and an invasion of privacy, regardless of the type of call" and decided that "banning" such calls made without consent was "the only effective means of protecting telephone consumers from this nuisance and privacy invasion." Pub. L. No. 102-243, §§ 2(10-13) (Dec. 20, 1991), codified at 47 U.S.C. § 227; see also *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012) ("The Act bans certain practices invasive of privacy").

21. According to findings by the Federal Communication Commission ("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. These types of damages are the same shared by the Plaintiff and the class members.

#### **JURISDICTION AND VENUE**

22. Jurisdiction and venue for purposes of this action are appropriate and conferred by 28 U.S.C. §1331.

23. The alleged violations described in this complaint took place in Tampa, Florida, which is within the territorial jurisdiction of the Middle District of Florida.

**FACTUAL ALLEGATIONS**

24. Plaintiff is a natural person, and citizen of the State of Florida, residing in Tampa, Florida.

25. Plaintiff is the “called party.” *See Breslow v. Wells Fargo Bank, N.A.*, 755 F. 3d 1265 (11th Cir. 2014); *Osorio v. State Farm Bank, F.S.B.*, 746 F. 3d 1242 (11th Cir. 2014).

26. Comenity is a corporation with its principal place of business in Columbus, Ohio, and conducts business in the State of Florida and across the United States.

27. Comenity has a despicable policy of calling family members and friends of the alleged debtor. Comenity then has their collectors read from a script that has no other purpose than to terrorize the alleged debtor through harassment of their friends and relatives.

28. Despite Comenity’s statements regarding urgency, there is absolutely nothing “urgent” about Comenity’s communications. Rather, these are garden-variety debt collection calls.

29. Comenity creates this false sense of “urgency” as a way to panic family members and friends with the hopes that they will call the alleged debtor and further instill panic in them, as well as to force the debtor to experience extreme embarrassment by forcing them to explain the debt-collection purpose behind the call to the friend or relative. Ultimately, another purpose of this tactic is to make it so that family and friends feel harassed and demand that the alleged debtor resolve the debt to end the harassment.

30. Comenity obviously never had “express consent” to call Plaintiff’s cellular telephone number or other similarly situated family and friends, as they had no relationship with Comenity.

31. Comenity placed several calls to Plaintiff's cellular telephone using an ATDS without the express prior consent to do so, and with the knowledge that they were calling the wrong number.

32. Comenity is believed to have used an "off the shelf predictive dialer" which qualifies as an ATDS to make the calls referenced in this complaint. Plaintiff's counsel has represented numerous debt collection clients in actions against Comenity who have described indicia of autodialer use by Comenity, such as the existence of a distinctive pause before Comenity's representative came onto the line.

33. Comenity has called numerous other individuals, including class members, without their express consent using this exact same predictive dialer.

34. Each call Comenity made to the Plaintiff's aforementioned cellular telephone number was done so without the "express permission" of the Plaintiff.

35. Plaintiff is the regular user and carrier of the cellular telephone number at issue, (813) 325-3537.

36. Comenity made at least one call to (813) 325-3537 using an "automatic telephone dialing system" (ATDS).

37. Comenity made numerous calls to (813) 325-3537 using an ATDS.

38. Each call Comenity made to (813) 325-3537 in the last four years was made using an ATDS.

39. Each call Comenity made to the Plaintiff's cell phone was done so knowing there was no "express consent" of the Plaintiff.

40. Each call Comenity made to the Plaintiff was made using an ATDS, which has the capacity to store or produce telephone numbers to be called, without human intervention, using a

random or sequential number generator; and to dial such numbers as specified by 47 U.S.C § 227(a)(1).

41. By effectuating these unlawful phone calls, Comenity has caused Plaintiff the very harm that Congress sought to prevent—namely, a "nuisance and invasion of privacy."

42. Comenity's aggravating and annoying phone calls trespassed upon and interfered with Plaintiff's rights and interests in her cellular telephone and cellular telephone line, by intruding upon Plaintiff's seclusion.

43. Comenity's phone calls harmed Plaintiff by wasting her time, trespassed on her phone, invaded her privacy as well as caused aggravation and inconvenience.

44. Moreover, "wireless customers [like Plaintiff] are charged for incoming calls whether they pay in advance or after the minutes are used." In re: Rules Implementing the TCPA of 1991, 23 FCC Rcd 559, 562 (2007). Comenity's phone calls harmed Plaintiff by depleting the battery life on her cellular telephone, and by using minutes allocated to Plaintiff by her cellular telephone service provider.

45. Despite actual knowledge of its wrongdoing, Comenity continued the campaign of illegal robocalls.

46. Comenity willfully or knowingly violated the TCPA with respect to the Plaintiff and the members of the class.

### **COUNT I**

#### **(Violation of the TCPA)**

47. Plaintiff incorporates Paragraphs one (1) through forty- six (46) above.



48. Comenity violated the TCPA with respect to the Plaintiff and members of the class each time it called the Plaintiff or those class members that were similarly situated without having express consent to place such calls using an ATDS.

49. Comenity knowingly or willfully violated the TCPA with respect to the Plaintiff and the class.

50. Comenity's repeated placement of unconsented-to, non-emergency telephone calls using an automatic telephone dialing system to the wireless telephone number of the Plaintiff and class members was a violation of federal law, including 47 U.S.C § 227(b)(1)(A)(iii).

51. As a result of Comenity's illegal conduct, Plaintiff and the members of the class suffered actual damages and, under § 227(b)(3)(B), is entitled to, inter alia, a minimum of \$500.00 in damages for each such violation of the TCPA.

52. The Plaintiff is also entitled to statutory treble damages for Comenity's willful or knowing violations of the TCPA.

53. Plaintiff and class members are also entitled to, and do seek, injunctive relief prohibiting Comenity from violating the TCPA in the future.

**WHEREFORE**, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Comenity for statutory damages, treble damages, actual damages and any other such relief the court may deem just and proper.

## **COUNT II**

### **(Invasion of Privacy – Intrusion Upon Seclusion)**

54. Plaintiff incorporates Paragraphs one (1) through forty- six (46) as if fully restated herein.

55. Defendant's policy of calling relatives and friends has repeatedly and intentionally invaded Plaintiff's privacy through Defendant's collection conduct.

56. All of the calls made to Plaintiff's cell phone by Defendant and its agents using an automatic telephone dialing system were made in violation of the TCPA and were unreasonable and highly offensive invasions of Plaintiff's right to privacy.

57. Defendant's persistent calls to her cellular telephone eliminated Plaintiff's right to be left alone. Defendant continues this practice with no regard to an alleged debtor's individualized situation and relationship with family members and friends.

58. Defendant's collection calls purposely made to the friend or family of an alleged debtor disrupted Plaintiff's privacy, disrupted Plaintiff's sleep, disrupted Plaintiff during mealtimes, disrupted Plaintiff during her work, and continually frustrated and annoyed Plaintiff.

59. Plaintiff has no escape to the incessant calls as Plaintiff is not who Defendant is even looking for. By continuing this campaign of calls, Defendant has intentionally made Plaintiff responsible in relaying communications that invade and disrupts Plaintiff during her everyday life.

60. These persistent autodialed collection calls eliminated the peace and solitude that the Plaintiff would have otherwise had in Plaintiff's home and anywhere else Plaintiff went with her cellular phone.

61. By calling her cellular phone with the intentions of harassment as described herein, under the false guise of finding another person, Plaintiff had no escape from these collection calls either in her home or when she left the home.

62. By persistently autodialing Plaintiff's cellular phone without prior express consent, Defendant invaded Plaintiff's right to privacy, as legally protected by the TCPA, and caused Plaintiff to suffer concrete and particularized harm.

63. Defendant's harassing collection conduct and tactic of repeatedly auto dialing Plaintiff to her cellular willfully knowing that Plaintiff is not the alleged debtor is highly offensive to a reasonable person.

64. Defendant intentionally intruded upon Plaintiff's solitude and seclusion.

65. As a result of Defendant's action or inaction, Plaintiff has been damaged.

**WHEREFORE**, Plaintiff respectfully demands a trial by jury on all issues so triable and judgment against Defendant for statutory damages, punitive damages, actual damages and any other such relief the court may deem just and proper.

### **CLASS ACTION ALLEGATIONS**

66. Plaintiff restates each of the allegations in all other paragraphs as if fully stated herein. Plaintiff, individually and on behalf of all others similarly situated, brings the above claims on behalf of a Class.

67. In this case, Plaintiff seeks to certify the class, subject to amendment, as follows:

The Comenity TCPA Class consists of:

(1) All persons in the United States (2) to whose cellular telephone number (3) Comenity placed a non-emergency telephone call relating to a debt (4) using substantially the same system(s) that were used to telephone Plaintiff (5) within 4 years of the filing of this complaint and (6) where Comenity did not have express consent to call said cellular telephone number.

68. Plaintiff represents and is a member of the Class. Excluded from the Class are Comenity and any entities in which Comenity has a controlling interest, Comenity's agents and employees, the Judge to whom this action is assigned, and any member of the Judge's staff and immediate family, and claims for personal injury, wrongful death and/or emotional distress.

69. Plaintiff is presently unaware of the exact number of members in the Class, but based upon the size and scope of Comenity's business, including the fact that Comenity Bank has

been sued hundreds of times for violating the TCPA, Plaintiff reasonably believes that the class members number at a minimum is in the thousands.

70. Plaintiff and all members of the Class have been harmed by Comenity's actions.

71. This Class Action Complaint seeks money damages and injunctive relief.

72. The joinder of all class members is impracticable due to the size and relatively modest value of each individual claim.

73. The disposition of the claims in a class action will provide substantial benefit to both the parties and the Court in avoiding multiplicity of identical suits. The class can be easily identified through records maintained by Comenity.

74. There are questions of law and fact common to the members of the Class, which common questions predominate over any questions that affect only individual class members.

Those common questions of law and fact include, but are not limited to:

- (1) Whether Comenity engaged in a pattern of using an ATDS to place calls to cellular telephones without the prior express consent of the called party;
- (2) Whether Comenity's conduct was knowing or willful; and
- (3) Whether Comenity's actions violated the TCPA.
- (4) Whether Comenity's action violated Florida's Invasion of Privacy law.

75. As a person who received the telephone calls using an ATDS or an artificial or prerecorded voice, without their prior express consent, all within the meaning of the TCPA, Plaintiff asserts claims that are typical of the members of the Class.

76. As a person who received the telephone calls without their prior express consent for a family member or relative's debt, Plaintiff asserts claims that are typical of the members of the Class.

77. Plaintiff will fairly and adequately represent and protect the interests of the Class, and Plaintiff does not have an interest that is antagonistic to any member of the Class.

78. Plaintiff has retained counsel experienced in handling class action claims involving violations of federal and state consumer protection statutes such as the TCPA and IOP.

79. A class action is the superior method for the fair and efficient adjudication of this controversy.

80. Class-wide relief is essential to compel Comenity to comply with the above-mentioned laws. The interest of class members in individually controlling the prosecution of separate claims against Comenity is small because the statutory damages in an individual action for violations are small.

81. Management of these claims is likely to present significantly fewer difficulties than are presented in many class claims because the calls at issue are all automated and the class members, by definition, did not provide the prior express consent required under the statute to authorize calls to their cellular telephones.

82. Comenity has acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the class as a whole appropriate.

83. Moreover, Plaintiff alleges that the above violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

**WHEREFORE**, Plaintiff requests that the Court enter judgment in her favor and favor of the Class, and against Comenity for:

- a. A declaration that Comenity's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227 and Florida's Invasion of Privacy laws;

- b. An injunction requiring Comenity not to call any third parties or numbers that were skip traced, or obtained through other means than by obtaining the called party's prior express consent to ensure that class members, including the Plaintiff, are not called now or when those class members obtain additional telephone numbers in the future;
- c. An injunction requiring Comenity to file quarterly reports of third-party audits with the Court on its system and procedures not to call any third parties or numbers that were skip traced to ensure that class members, including the Plaintiff, are not called in the future;
- d. An award of statutory and actual damages in an amount to be proven at trial;
- e. An award of statutory damages for Plaintiff and each Class member in the amount of \$500.00 for each and every call that violated the TCPA;
- f. An award of treble damages, as provided by statute, of up to \$1,500.00 for Plaintiff and each Class member for each and every call that violated the TCPA;
- g. An order certifying this action to be a proper class action pursuant to the Federal Rules of Civil Procedure 23, establishing the appropriate Classes and any Sub-classes the Court deems appropriate, finding that Plaintiff is a proper representative of the Classes, and appointing the lawyers and law firms representing Plaintiff as counsel for the Classes;
- h. An award of Plaintiff's attorneys' fees, litigation expenses and costs of suit; and
- i. Such further and other relief the Court deems reasonable and just.

Plaintiff, individually and on behalf of all others similarly situated, demands trial by jury.

Respectfully Submitted,

/s/ William "Billy" Howard, Esq.

William "Billy" Pearce Howard, Esq.

Florida Bar No.: 0103330

Billy@TheConsumerProtectionFirm.com

The Consumer Protection Firm

4030 Henderson Boulevard

Tampa, FL 33629

Telephone: (813) 500-1500

Facsimile: (813) 435-2369

Attorney for Plaintiff

# Exhibit A

**NCLC**<sup>®</sup>NATIONAL  
CONSUMER  
LAW  
CENTER<sup>®</sup>

# CONSUMER COMPLAINTS ABOUT DEBT COLLECTION:

## ANALYSIS OF UNPUBLISHED DATA FROM THE FTC

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## APPENDIX B

### COMPANIES WITH THE MOST DEBT COLLECTION COMPLAINTS IN 2017

RANK	COMPANY NAME	COMPLAINTS
1	Enhanced Recovery Corporation	13,354
2	Portfolio Recovery Associates	12,237
3	Credit One Bank	11,750
4	Diversified Consultants	7,618
5	Comenity Bank	7,086
6	I. C. System, Inc.	7,051
7	Receivables Performance Management	6,804
8	Transworld Systems Inc.	6,122
9	Allied Interstate, LLC	5,797
10	Midland Credit Management	4,814
11	Convergent Outsourcing, Inc.	4,282
12	Capital One Bank	3,939
13	Medicredit	3,641
14	Credit Collection Services	3,587
15	Navient Corporation	3,402
16	Chase Bank	3,335
17	Credit Acceptance	2,961
18	Citibank	2,780
19	Credit Management Services	2,646
20	ACE Cash Express	2,585
21	Fingerhut	2,565
22	Synchrony Bank	2,448
23	Quicken Loans	2,375
24	The CCS Companies	2,142



RANK	COMPANY NAME	COMPLAINTS
25	Wells Fargo Bank	2,080
26	Enhanced Resource Centers	1,977
27	EOS CCA	1,975
28	Afni Inc.	1,967
29	Southwest Credit Systems LP	1,843
30	Central Credit Services, LLC	1,832
31	EGS Financial Care, Inc.	1,788
32	National Credit Adjusters	1,718
33	Wal-Mart	1,592
34	Conns Home Plus	1,541
35	ERC	1,508
36	Progressive Leasing	1,500
37	Hunter Warfield	1,484
38	Credence Resource Management, LLC	1,458
39	Aargon Agency, Inc.	1,375
40	Enterprise Recovery Systems, Inc.	1,303
41	PayPal Holdings, Inc.	1,289
42	CBE Group Inc.	1,273
43	Commonwealth Financial Systems, Inc.	1,266
44	Santander Bank	1,254
45	Rent-A-Center	1,220
46	Ad Astra Recovery Service Inc.	1,170
47	Contract Callers Inc.	1,153
48	American Medical Collection	1,150
49	CashNetUSA	1,075
50	MyRentToOwn	1,048

Source: Data produced to NCLC by the FTC on July 23, 2018 in response to a Freedom of Information Act request.

# Exhibit B

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-14534-CIV-ROSENBERG/MAYNARD

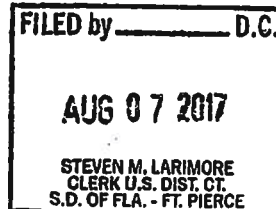
JOHNNNA EHRlich,

Plaintiff,

v.

COMENITY CAPITAL BANK, a Subsidiary of Comenity LLC,

Defendant.



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ORDER ON PLAINTIFF'S MOTION TO COMPEL (DE 32)

THIS CAUSE comes before this Court upon the above Motion. Having reviewed the Motion, Response, and Reply<sup>1</sup>, this Court finds as follows:

1. At some point in April (the Defendant says it was on the 22nd, and not the 7th, of April) the Plaintiff sent her First Set of Interrogatories and her First Request for Production to the Defendant. The Defendant did not answer those two sets of discovery requests until May 22nd (the extended deadline to which the Plaintiff had agreed). Even still the Defendant's answer was only partial. The Defendant relied heavily on boilerplate objections at the time of its initial answer.

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<sup>1</sup> The Plaintiff filed her Reply on Friday, August 4th but after the noontime deadline. This Court hereby accepts the technically late Reply as timely and takes it into consideration.

2. The Defendant says the Plaintiff's conferral effort during the time period after its May 22nd initial answer was insufficient. The Defendant complains that the Plaintiff limited the conferral to demanding the Defendant to withdraw its objections. The Defendant complains that the Plaintiff did not articulate its discovery requests with the degree of specificity that it was waiting for. In any event one obstacle to the production of responsive discovery was resolved during this period of time. On June 27th the parties agreed to a Confidentiality Order to protect the sharing of sensitive information.

3. Still other progress was made regardless of the sufficiency of the Plaintiff's conferral effort. On June 25th the Defendant made its first supplemental production with the promise of additional information to come.

4. On June 29th this Court rendered a discovery order in this case. Although it concerned a separate discovery dispute, that Order squarely informed the parties of the need to fulfill their discovery obligations in a good faith and common sense way. That Order also reminded the parties to act expeditiously to complete discovery before the September 8, 2017 deadline.

5. On July 7th the Defendant made a second supplemental production. On July 17th the Defendant reported an anticipated third supplemental production that still was to come. The

Plaintiff filed the instant Motion to Compel on July 19th. The Defendant's Response indicates that still more information will be produced, but as the Plaintiff emphasizes in her Reply, that promised production remains outstanding.

6. This Court will use this Order to resolve those discovery disputes that remain outstanding after the briefing of the instant Motion to Compel. Before turning to the substance of those disputes, this Court makes a finding of a procedural nature first. This Court notes two basic deadlines. First the Defendant had thirty days to answer both the Requests for Production, see Rule 34(b)(2)(A), Fed.R.Civ.P., and the Interrogatories, see Rule 33(b)(2), Fed.R.Civ.P. Second the Plaintiff had thirty days from the Defendant's answer to seek judicial relief. See Local Rule 26.1(g). And of course there is the requirement to engage in a good faith conferral before seeking judicial relief. It is difficult to see how these requirements were met here. The Response and Reply narrow the issues down greatly, but that should have been achieved much sooner in the process and before the filing of the Motion to Compel. As the timing now stands, these discovery disputes are being addressed during the same week when the Plaintiff is deposing the Defendant's corporate representatives and officers.

7. Ruling on the substance of the remaining discovery disputes, this Court finds the Plaintiff entitled to relief. The

Defendant shall answer Interrogatory No. 3 regarding contact information for its two former employee fact witnesses. The Defendant shall answer Interrogatory No. 2 by answering specifically how many times it called the Plaintiff's cell phone number. The Defendant shall answer this interrogatory with a specific (not approximate) number even if that information can be gleaned from underlying records and without awaiting reconciliation with the Plaintiff's telephone records.

8. The Defendant shall answer those several requests (Requests for Production Nos. 1, 2, 10, 27-29, 46-48, and 59) that seek its policies and procedures for complying with laws that govern telephone calls and collection activity in place during the relevant time period. The Defendant shall use good faith and common sense to produce those policies and procedures that relate to the violations that the Plaintiff is alleging for her situation. As for redactions, the Defendant shall prepare a Privilege Log to account for what redactions it has made and why. This Court allows the redactions on the Defendant's representation to this Court that the redacted information is both highly sensitive and irrelevant to the Plaintiff's theories of relief.

9. Lastly this Court grants those several requests (Requests for Production Nos. 38-45 and 50-53) that seek complaints made to the Defendant during 2014 through 2017 from

consumers or governmental agencies about unlawful telephone calls similar to what the Plaintiff alleges she experienced. The Defendant shall produce records of such complaints whether made formally or informally consistent with how it receives, collects, and maintains them in the regular course of its business and recordkeeping operations. If the Defendant lacks any such database or means of recordkeeping that is accessible and searchable with a reasonable degree of effort, the Defendant shall make a clear explanation of such.

10. The Defendant shall comply with this Order by FRIDAY, AUGUST 18, 2017. This Court gives the Defendant the benefit of some additional time to gather this information. However the Defendant shall not construe this Friday, August 18th deadline as a shield that prevents deponents from answering relevant questions during this week's depositions.

It is hereby,

**ORDERED AND ADJUDGED** that the Motion to Compel (DE 32) is **GRANTED** as explained above. The Defendant shall comply by **FRIDAY, AUGUST 18, 2017**. This Court denies at this time to award fees and costs or to impose any sanctions. However this Court will continue to monitor all future discovery disputes for careful, good faith, and common sense compliance with all general discovery obligations and this Court's discovery Orders to-date.

**DONE AND ORDERED** in Chambers at Fort Pierce, Florida, this  
7<sup>m</sup> day of August, 2017.

  
\_\_\_\_\_  
SHANIEK M. MAYNARD  
UNITED STATES MAGISTRATE JUDGE



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
Angela McNeal, on behalf of herself and all others similarly situated
(b) County of Residence of First Listed Plaintiff Hillsborough
(c) Attorneys (Firm Name, Address, and Telephone Number) William "Billy" Peerce Howard, Esq., The Consumer Protection Firm, 4030 Henderson Boulevard, Tampa, FL 33629; (813) 500-1500

DEFENDANTS
Comenity Bank
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

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)
PTF DEF
Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
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) Click here for: Nature of Suit Code Descriptions.

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Contains various legal categories and checkboxes.

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 - Transfer
8 Multidistrict Litigation - Direct File

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.;
Brief description of cause: Violations of the TCPA and Invasion of Privacy

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

VIII. RELATED CASE(S) IF ANY
(See instructions): JUDGE DOCKET NUMBER

DATE 07/02/2019 SIGNATURE OF ATTORNEY OF RECORD s/ William "Billy" Peerce Howard, Esq.

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 there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven 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 – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- 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.



Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_ .

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_ , who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_ ; or

I returned the summons unexecuted because \_\_\_\_\_ ; or

Other *(specify)*:

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_ 0.00 \_\_\_\_\_ .

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

**Print**

**Save As...**

**Reset**

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Comenity Bank Sued Over Allegedly 'Harassing' Debt Collection Calls Placed to Friends, Relatives](#)

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