

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

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	:	Case No.: 4:20-cv-1186-JAR
TIMOTHY MILES, on behalf of himself and others similarly situated,	:	
	:	
Plaintiff,	:	Class Action
	:	
vs.	:	Jury Trial Demanded
	:	
MEDICREDIT, INC.,	:	
	:	
Defendant.	:	
	:	
	x	

AMENDED CLASS ACTION COMPLAINT

Nature of the Action

1. Timothy Miles (“Plaintiff”) brings this class action against Medcredit, Inc. (“Medicredit”) under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

2. Section 227(b)(1)(A)(iii) of the TCPA sets forth restrictions on the use of automated telephone equipment and prerecorded voice calls, and provides in pertinent part:

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—

(A) to make 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—

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call.

3. Upon information and belief, Medcredit routinely violates 47 U.S.C. § 227(b)(1)(A)(iii) by placing non-emergency telephone calls to consumers’ cellular telephone numbers by using an automatic telephone dialing system (“ATDS”) and an artificial or prerecorded

voice, without the prior express consent of the consumers, in that Mediacredit repeatedly placed calls to wrong or reassigned cellular telephone numbers that do not belong to the intended recipients of the calls. *Accord Lemos v. Credit One Bank, N.A.*, 960 F.3d 1164, 1166 (9th Cir. 2020) (“The principal question in this case is whether Credit One can escape liability under the TCPA because the party it intended to call (its customer) had given consent to be called, even though the party it actually called had not. Consistent with every circuit to have addressed this issue, we hold that this argument fails under the TCPA’s text, most naturally read.”).

4. Of note, Mediacredit previously settled two class actions in connection with which the plaintiffs asserted claims under the TCPA nearly identical to those Plaintiff now asserts. *See Martinez v. Mediacredit, Inc.*, No. 4:16-cv-01139-ERW, Doc. 105 (E.D. Mo. May 15, 2018) (Webber, J.); *Prater v. Mediacredit, Inc.*, No. 4:14-cv-00159-ERW, Doc. 89 (E.D. Mo. Dec. 7, 2015) (Webber, J.).

Jurisdiction

5. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

6. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b), where Mediacredit resides in this District, and where a substantial part of the events giving rise to this action occurred in this District.

Parties

7. Plaintiff is a natural person who at all relevant times resided in Chapel Hill, North Carolina.

8. Mediacredit is a debt collection company with principal offices located in Earth City, Missouri.

9. Parallon Business Solutions, LLC (“Parallon”) owns Mediacredit.

10. Parallon shares senior management with Mediacredit, including having the same president, vice president, and treasurer.

11. Parallon touts itself as “one of the country’s largest premier revenue cycle partners, with more than 18,100 employees serving more than 4,300 hospitals and physician practices.”¹

12. Annually, Parallon collects “more than \$51 billion and interact[s] with 49 million patients.”²

13. Parallon operates at least seven call centers.³

14. Parallon uses “automated dialers, IVR, and sophisticated workflows” as part of its collection practices.⁴

15. Mediacredit has a Public Utility Commission of Texas Automatic Dial Announcing Device permit, no. 150005, which it first obtained in 2015 and which it renewed through at least January 2021.⁵

16. Mediacredit’s Public Utility Commission of Texas Automatic Dial Announcing Device permit is registered through Deron Brown, senior counsel of Parallon.

Factual Allegations

17. In an attempt to contact a third party named “Amy” for the purpose of attempting to collect an alleged debt, Mediacredit placed numerous calls to cellular telephone number (314) XXX-2368—a number for which Plaintiff is the customary user.

¹ <https://parallon.com/about-us> (last visited Dec. 7, 2020).

² <https://parallon.com/about-us> (last visited Dec. 7, 2020).

³ <https://parallon.com/about-us/people/don-wright> (last visited Dec. 7, 2020).

⁴ <https://parallon.com/services/early-out-self-pay-services> (last visited Dec. 7, 2020).

⁵ See https://www.puc.texas.gov/industry/communications/directories/adad/report_adad.aspx?ID=ADSQL01DB1245703600001 (last visited Dec. 7, 2020).

18. Mediacredit began placing calls and delivering artificial or prerecorded voice messages to Plaintiff's cellular telephone number in or around January 2018, and the calls and prerecorded voice messages continued through at least February 2018.

19. Mediacredit called Plaintiff's cellular telephone number on January 22, 2018.

20. Mediacredit called Plaintiff's cellular telephone number on January 30, 2018.

21. Mediacredit called Plaintiff's cellular telephone number on February 5, 2018.

22. Mediacredit called Plaintiff's cellular telephone number on February 12, 2018.

23. Mediacredit called Plaintiff's cellular telephone number on February 21, 2018.

24. Mediacredit called Plaintiff's cellular telephone number on February 28, 2018.

25. In connection with its calls to Plaintiff's cellular telephone number, Mediacredit also delivered prerecorded voice messages to Plaintiff's cellular telephone voice mail.

26. By way of example, one of the prerecorded voice messages that Mediacredit delivered to Plaintiff's cellular telephone voice mail in February 2018 stated:

Hello, we are calling from Mediacredit on behalf of Missouri Baptist Medical Center. This is a call from a debt collector. Please return our call at 1-800-888-2238 Monday through Friday during normal business hours. Thank you.

27. Upon information and good faith belief, Mediacredit's records will identify each call it placed to Plaintiff's cellular telephone number.

28. Upon information and good faith belief, Mediacredit's records will identify each prerecorded voice message it delivered to Plaintiff's cellular telephone.

29. Mediacredit placed calls to Plaintiff's cellular telephone number from telephone number (800) 888-2238, a number assigned to Mediacredit.

30. When dialed, telephone number (800) 888-2238 plays a prerecorded voice message greeting that begins: "Hello, thank you for calling Mediacredit Incorporated"

31. Mediacredit placed each of its calls to Plaintiff's cellular telephone number in an effort to contact and collect a debt allegedly owed by a third party, unknown to Plaintiff, named "Amy".

32. On at least one occasion, Plaintiff answered Mediacredit's call and, after a delay, was connected to one of Mediacredit's representatives.

33. Upon being connected to one of Mediacredit's representatives, Plaintiff explained that Mediacredit had the wrong number, and that he did not know the person Mediacredit was attempting to reach.

34. Despite informing Mediacredit that it was placing calls to the wrong person, Mediacredit continued to place calls to Plaintiff's cellular telephone number.

35. Upon information and good faith belief, Mediacredit utilizes a "WN" notation—signifying "wrong number"—when a call recipient informs Mediacredit that it placed a call to a wrong number.

36. Upon information and good faith belief, and in light of the frequency, character, number, and nature of the calls, including Mediacredit's use of an artificial or prerecorded voice, Mediacredit used an ATDS, as defined by 47 U.S.C. § 227(a)(1), to place its calls to Plaintiff's cellular telephone number.

37. Mediacredit utilizes a predictive dialer to place outbound collections calls.

38. A predictive dialer is a type of ATDS that has the capacity to store numbers to be called, and to dial such numbers automatically (even if the system must be turned on or triggered by a person). *See Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1053 (9th Cir. 2018); *see also Pederson v. Donald J. Trump for President, Inc.*, 465 F. Supp. 3d 929, 936 (D. Minn. 2020) ("The Eighth Circuit has not yet weighed in on this issue, and the Court finds the logic of the Second and Ninth Circuits to be more persuasive. Under the Trump Campaign's theory (and Eleventh Circuit precedent), software that could dial a number at random from a phonebook (imagining that there

were still such things as phonebooks) would not constitute an autodialer, because a phonebook is nothing more than a list of numbers compiled by humans. The Court sees no reason why software must generate numbers itself, and will not read such a limitation into the text of the statute.”).

39. Upon information and good faith belief, Mediacredit uploads telephone numbers to be called to its dialer, which stores the numbers to be called and automatically dials the numbers based on the availability of Mediacredit’s customer service representatives to field connected calls.

40. Upon information and good faith belief, Mediacredit used such hardware and software to place the calls at issue to Plaintiff’s cellular telephone number.

41. Mediacredit did not have Plaintiff’s prior express consent to place any calls to his cellular telephone number.

42. Mediacredit did not have Plaintiff’s prior express consent to deliver artificial or prerecorded voice messages to his cellular telephone.

43. Plaintiff never provided his cellular telephone number to Mediacredit.

44. Plaintiff never had any business relationship with Mediacredit.

45. Plaintiff was never a patient at Missouri Baptist Medical Center.

46. Plaintiff does not, and never did, owe money to Missouri Baptist Medical Center.

47. Mediacredit did not place any calls to Plaintiff’s cellular telephone number for emergency purposes.

48. Upon information and good faith belief, Mediacredit placed its calls to Plaintiff’s cellular telephone number under its own free will.

49. Upon information and good faith belief, Mediacredit had knowledge that it was using an ATDS to place its calls to Plaintiff’s cellular telephone number.

50. Upon information and good faith belief, Medicredit had knowledge that it was using an artificial or prerecorded voice in connection with calls it placed to Plaintiff's cellular telephone number.

51. Plaintiff suffered actual harm as a result Medicredit's calls and prerecorded voice messages in that he suffered an invasion of privacy, an intrusion into his life, a private nuisance, and was forced to spend time attempting to get Medicredit's calls and prerecorded voice messages to stop.

52. Upon information and good faith belief, Medicredit, as a matter of pattern and practice, uses an ATDS, and an artificial or prerecorded voice, to place calls, absent prior express consent, to telephone numbers assigned to a cellular telephone service.

Class Action Allegations

53. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b) on behalf of himself and two classes of similarly situated individuals as defined below:

ATDS Class: All persons and entities throughout the United States (1) to whom Medicredit, Inc. placed, or caused to be placed, at least one call (2) directed to a number assigned to a cellular telephone service, by (3) using an automatic telephone dialing system, (4) from December 16, 2017 through and including the date of class certification, (5) where the called party did not have an account with Medicredit, Inc.

Prerecorded Voice Class: All persons and entities throughout the United States (1) to whom Medicredit, Inc. placed, or caused to be placed, at least one call (2) directed to a number assigned to a cellular telephone service, by (3) using an artificial or prerecorded voice, (4) from December 16, 2017 through and including the date of class certification, (5) where the called party did not have an account with Medicredit, Inc.

Excluded from the classes are Mediacredit, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Mediacredit has or had a controlling interest.

54. The proposed classes are so numerous that, upon information and belief, joinder of all members is impracticable.

55. The exact number of class members is unknown to Plaintiff at this time and can only be determined through appropriate discovery.

56. The proposed classes are ascertainable because they are defined by reference to objective criteria.

57. In addition, and upon information and belief, the cellular telephone numbers of all members of the classes can be identified in business records maintained by Mediacredit and third parties, including class members.

58. Plaintiff's claims are typical of the claims of the members of the classes because all of the class members' claims originate from the same conduct, practice and procedure on the part of Mediacredit, and Plaintiff possesses the same interests and has suffered the same injuries as each class member.

59. Like all members of the proposed ATDS Class, Plaintiff received telephone calls from Mediacredit using an ATDS, without his consent, in violation of 47 U.S.C. § 227.

60. Like all members of the proposed Prerecorded Voice Class, Plaintiff received artificial or pre-recorded voice messages from Mediacredit, without his consent, in violation of 47 U.S.C. § 227.

61. Plaintiff will fairly and adequately protect the interests of the members of the classes and has retained counsel experienced and competent in class action litigation.

62. Plaintiff's counsel was previously certified as class counsel in TCPA class actions against Mediacredit.

63. Plaintiff has no interests that are contrary to or in conflict with the members of the classes that he seeks to represent.

64. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy, since joinder of all members is impracticable.

65. Furthermore, as the damages suffered by individual members of the classes may be relatively small, the expense and burden of individual litigation make it impracticable for the members of the classes to individually redress the wrongs done to them.

66. There will be little difficulty in the management of this action as a class action.

67. Issues of law and fact common to the members of the classes predominate over any questions that may affect only individual members, in that Mediacredit has acted on grounds generally applicable to the classes.

68. Among the issues of law and fact common to the classes are:

- a. Mediacredit's violations of the TCPA as alleged in this amended class action complaint;
- b. Mediacredit's use of an ATDS as defined by the TCPA (ATDS Class);
- c. Mediacredit's use of artificial or prerecorded voice messages (Prerecorded Voice Class);
- d. Mediacredit's practice of placing calls to wrong or reassigned cellular telephone numbers;
- e. Mediacredit's practice of delivering artificial or prerecorded voice messages to wrong or reassigned cellular telephone numbers (Prerecorded Voice Class); and
- f. the availability of statutory damages.

69. Absent a class action, Mediacredit's violations of the law will be allowed to proceed without a full, fair, judicially supervised remedy.

**Count I: Violations of 47 U.S.C. § 227(b)(1)(A)(iii)
On behalf of Plaintiff and the ATDS Class**

70. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1-69.

71. Mediacredit violated 47 U.S.C. § 227(b)(1)(A)(iii) by utilizing an ATDS to place telephone calls to Plaintiff's cellular telephone number, without his consent.

72. As a result of Mediacredit's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff and the members of the ATDS class are entitled to damages in an amount to be proven at trial.

**Count II: Violations of 47 U.S.C. § 227(b)(1)(A)(iii)
On behalf of Plaintiff and the Prerecorded Voice Class**

73. Plaintiff repeats and re-alleges each and every factual allegation contained in paragraphs 1-69.

74. Mediacredit violated 47 U.S.C. § 227(b)(1)(A)(iii) by utilizing an artificial or prerecorded voice in connection with calls it placed to Plaintiff's cellular telephone number, without his consent.

75. As a result of Mediacredit's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff and the members of the Prerecorded Voice Class are entitled to damages in an amount to be proven at trial.

WHEREFORE, Plaintiff prays for relief and judgment, as follows:

(a) Determining that this action is a proper class action and designating Plaintiff as the class representative under Rule 23 of the Federal Rules of Civil Procedure;

(b) Adjudging that Mediacredit violated 47 U.S.C. § 227(b)(1)(A)(iii), and enjoining Mediacredit from continuing to place calls to Plaintiff's cellular telephone number, from

placing calls to consumers' cellular telephone numbers by using an ATDS or an artificial or prerecorded voice without the prior express consent of the consumers, and from committing further violations of 47 U.S.C. § 227(b)(1)(A)(iii);

(c) Awarding Plaintiff and members of the classes statutory damages pursuant to 47 U.S.C. § 227(b)(3) in an amount up to \$1,500.00 per violation;

(d) Awarding Plaintiff and members of the classes their reasonable costs, expenses, and attorneys' fees incurred in this action, including expert fees, pursuant to Rule 23 of the Federal Rules of Civil Procedure; and

(e) Awarding other and further relief as the Court may deem just and proper.

Jury Trial Demanded

Plaintiff hereby demands a trial by jury.

Dated: December 14, 2020

/s/ Michael L. Greenwald
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CERTIFICATE OF SERVICE

I certify that on December 14, 2020, the foregoing document was filed with the Court using CM/ECF, which will send notification of such to all counsel of record.

/s/ Michael L. Greenwald
Michael L. Greenwald