2024 WL 1657195
Only the Westlaw citation is currently available.
United States District Court, M.D. Florida,
Tampa Division.

William Johnson MOFFET, individually and on behalf of others similarly situated, Plaintiff,
v.
EVERGLADES COLLEGE, INC. d/b/a Keiser University, Defendant.

Case No. 8:23-cv-01787-KKM-AEP
|
Signed March 4, 2024

Attorneys and Law Firms

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REPORT AND RECOMMENDATION

ANTHONY E. PORCELLI, United States Magistrate Judge

***1** This cause is before the Court on Defendant's Motion to Dismiss or Strike Plaintiff's First Amended Complaint (Doc. 32). Plaintiff filed its response and Memorandum of Law in Opposition to Defendant's Motion to Dismiss (Doc. 34), and Defendant filed a Notice of Supplemental Authority in Support of the Motion to Dismiss (Doc. 35). The Court held a hearing on January 23, 2024, on Defendant's Motion. Having considered these filings and the arguments made by the parties at the hearing, it is recommended that Defendant's Motion (Doc. 32) be GRANTED to the extent that Plaintiff's First Amended Complaint is DISMISSED WITHOUT PREJUDICE, with leave to amend and provide greater detail as to the allegations of a prerecorded voice, and DENIED in all other respects.

I. Background

Starting on February 6, 2023, Plaintiff alleges that Defendant sent a series of messages and calls inviting Plaintiff to visit the college campus and meet with an admissions counselor (Doc. 24, ¶¶ 32–43, 45–46). Plaintiff alleges that on March 3, 2023, and on March 31, 2023, Plaintiff asked Defendant to remove him from the contact list (Doc. 24, ¶¶ 35, 41). The parties acknowledge that the dispute at bar focuses on a specific incident where Plaintiff alleges that he received a prerecorded voicemail from Defendant on April 27, 2023, after Plaintiff requested to be removed from the call list (Doc. 24, ¶ 46). Plaintiff alleges that the voicemail stated it was from the "University admissions department" and were calling to inform Plaintiff how to enroll in classes (Doc. 24, ¶ 46). Plaintiff alleges that the purpose of the calls from Defendant were to solicit Plaintiff to register for classes from Defendant (Doc. 24, ¶ 47). Plaintiff alleges therefore that Defendant "was attempting to provide consumer services in the form of college classes to Plaintiff" (Doc. 24, ¶ 47).

Plaintiff is asserting two claims. Plaintiff's first claim is for negligent and willful/knowing breaches of the Telephone Consumer Protection Act (TCPA) for using prerecorded voice messages to make non-emergency telephone calls to the cell phones of Plaintiff and other members of the putative Class without their prior express written consent (Doc. 24, ¶ 71). Plaintiff seeks to certify a "TCPA Prerecorded Voice Class" for individuals across the United States who received similar unsolicited calls

from the Defendant within the past four years (Doc. 24, ¶ 57). Plaintiff's second claim is for violation of the Florida Telephone Solicitation Act (FTSA), for calling Plaintiff's cell phone with a recording without Plaintiff's consent (Doc. 24, ¶ 85). Plaintiff seeks to certify an "FTSA Recorded Voice Class" consisting of "[a]ll persons within the State of Florida who received any solicitation/telemarketing phone calls from Defendant that included the playing of a recorded message when a connection was completed to a number without the prior express written consent of the called party" (Doc. 24, ¶ 57). Plaintiff contends that "Plaintiff and the other members of the putative Class were harmed and are each entitled to a minimum of $500.00 in damages for each violation" (Doc. 24, ¶ 87).

II. Standard of Review

A. Motion to Dismiss

***2** In considering a motion to dismiss under Rule 12(b)(6), the court views the complaint in the light most favorable to the plaintiff and accepts as true all of the factual allegations contained therein. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (citations omitted); *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003) (citation omitted). The court need not, however, "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). The plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). Although a complaint challenged by a Rule 12(b)(6) motion to dismiss need not contain detailed factual allegations, a plaintiff must provide the grounds for his or her entitlement to relief, and "a formulaic recitation of the elements of a cause of action will not do." *Id.* at 555 (citations omitted). The court must be able to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). Accordingly, only a complaint that states a plausible claim for relief will survive a motion to dismiss. *See id.* at 679.

B. Motion to Strike

Rule 12(f) states that a "court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). However, "it is well settled among courts in this circuit that motions to strike are generally disfavored and will usually be denied unless it is clear the pleading sought to be stricken is insufficient as a matter of law." *Blanc v. Safetouch, Inc.*, No. 3:07-cv-1200, 2008 WL 4059786, at *1 (M.D. Fla. Aug. 27, 2008) (citing *Fabrica Italiana Lavorazione Materie Organiche S.A.S. v. Kaiser Aluminum & Chem. Corp.*, 684 F.2d 776, 779 (11th Cir. 1982)). A pleading is "insufficient as a matter of law" only if it is patently frivolous on its face or is clearly invalid as a matter of law. *Belmer v. Ezpawn Fla., Inc.*, No. 8:20-CV-1470-T-33SPF, 2020 WL 7419663, at *1 (M.D. Fla. Sept. 28, 2020). The court "will not exercise its discretion under the rule to strike a pleading unless the matter sought to be omitted has no possible relationship to the controversy, may confuse the issues, or otherwise prejudice a party." *Reyher v. Trans World Airlines, Inc.*, 881 F. Supp. 574, 576 (M.D. Fla. 1995).

III. Discussion

Defendant argues that both of Plaintiff's claims should be dismissed. First, Defendant contends that Plaintiff does not satisfy an essential element of his TCPA and FTSA claims to prove that the call was a prerecorded call, for lack of detail about the call. Second, as a matter of law, Defendant maintains that Plaintiff cannot satisfy an essential element of his FTSA claim to prove that the call was a "telephonic sales call." Defendant claims that it is a tax-exempt nonprofit organization and Plaintiff pleads that Defendant was offering the ability to apply for educational courses to earn a degree. Defendant reasons then that neither a seat in a class nor an education is a consumer good that is transferrable between persons, thus warranting dismissal of the claim. Alternatively, Defendant argues that if this Court does not dismiss the case entirely then it should strike the "for each violation" language from Plaintiff's FTSA claim. Defendant asserts that an FTSA claimant is entitled to, at most a single statutory penalty, no matter how many calls the claimant received. This court will address each argument in turn.

A. Plaintiff insufficiently plead facts to show that Plaintiff received a prerecorded voicemail

Defendant first argues that Plaintiff's First Amended Complaint should be dismissed for Plaintiff's failure to allege sufficient facts to support the claim that the call in question was a "prerecorded voicemail." Defendant claims that Plaintiff here has "merely parrot[ed] the statutory language with regard to the prerecorded voice element in the TCPA claim and the recorded message element in the FTSA claim." (Doc. 32, at 11). Plaintiff states in the First Amended Complaint that

> ***3** On or around April 27, 2023, Plaintiff received a phone call from the phone number 888-420-2111. Plaintiff did not answer the call and Defendant left a prerecorded voice mail on Plaintiff's phone. The voicemail said they were from the "University admissions department" and were calling informing Plaintiff on how to enroll for classes.

(Doc. 24, ¶ 46). Further, the First Amended Complaint states that "Plaintiff's difficulty in getting a live person on this call and the long pause before any person showed up on the line tends to show that Defendant and/or Defendant's agent used an automated system for the selection and dialing of telephone numbers" (Doc. 24, ¶ 41).

Defendant asserts courts are clear that "a plaintiff may not merely recite the statutory elements [of the TCPA] of the use of ... [a] prerecorded voice without alleging additional facts to support." *Adams v. Ocwen Loan Servicing, LLC*, 366 F. Supp. 3d 1350, 1355–56 (S.D. Fla. 2018). For instance, in *Speidel v. JP Morgan Chase & Co.*, the plaintiff alleged that the defendant "willfully violated the TCPA by placing calls using an automatic telephone dialing system to dial plaintiff's cellular or residential telephone, or by using an artificial or prerecorded voice to deliver a message to plaintiff." *Speidel v. JP Morgan Chase & Co.*, No. 2:13-CV-852-FTM-29, 2014 WL 582881, at *2 (M.D. Fla. Feb. 13, 2014). On a motion to dismiss, the district court found that such allegations merely followed the language of the statute and failed to identify the nature of the calls. Thus, the district court dismissed that count without prejudice. Conversely, in *Somogyi v. Freedom Mortgage Corporation*, the plaintiffs alleged that the defendant used a prerecorded voice to call their residential landline over a certain period of time. *Somogyi v. Freedom Mortg. Corp.*, No. CV 17-6546 (JBS/JS), 2018 WL 3656158, at *7 (D.N.J. Aug. 2, 2018). The plaintiffs supported this allegation that the voice was prerecorded "based on its clarity and cadence, and the absence of anything specific such as the name of the person being called." *Id.* From this, the district court found that although the plaintiffs did not elaborate on the clarity or cadence of the voice on the message, "they need not offer "[d]etailed factual allegations" so long as the Amended Complaint offers enough "factual enhancement[s]" to cross the line "between possibility and plausibility of 'entitlement to relief.' " *Id.* (quoting *Twombly*, 550 U.S. at 555, 557). Accordingly, the plaintiffs had alleged sufficient facts to allow a reasonable inference that the defendant used an artificial or prerecorded voice and survived the motion to dismiss. *Id.*

Here, this Court finds Defendant's argument well-taken and agrees that the allegations in Plaintiff's First Amended Complaint align more with the circumstances in *Speidel*. While Plaintiff offers some support for the allegation that Defendant used a prerecorded voice based on "Plaintiff's difficulty in getting a live person on this call and the long pause before any person showed up on the line," it does not necessarily describe the allegedly prerecorded voice but rather the lack of a voice at all (Doc. 24, ¶ 41). In contrast, the plaintiff in *Somogyi* grounded the prerecorded voice allegations in the "clarity and cadence" of the message, which satisfied the court there that sufficient facts had been plead. At this stage, this Court is unsatisfied with the prerecorded voice allegations plead in Plaintiff's First Amended Complaint. Accordingly, it is recommended that Plaintiff should amend the First Amended Complaint to provide this Court with a more detailed description of the prerecorded message.

B. Plaintiff's allegations regarding the communications about earning a college degree are sufficient to state a claim under the FTSA

***4** Defendant next argues that Plaintiff's FTSA claim fails as a matter of law because a call about the opportunity to earn a college degree is not a telephonic sales call. Defendant reasons that a college degree is not a consumer good or service within the meaning of the FTSA because it is not personal property that can be bought or sold by a student. Plaintiff is bringing a claim under Florida Statutes Section 501.059(8)(A) which states that:

> A person may not make or knowingly allow to be made an unsolicited telephonic sales call if such call involves an automated system for the selection and dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

Fla. Stat. § 501.059(8)(A). Under the statute, a "telephonic sales call" is defined as "a telephone call, text message, or voicemail transmission to a consumer for the purpose of soliciting a sale of any consumer goods or services." Fla. Stat. § 501.059(1)(j). The statute further defines consumer goods or services as "real property or tangible or intangible personal property that is normally used for personal, family, or household purposes ..., and any services related to such property." Fla. Stat. § 501.059(1)(c).

Beyond the language in the statute, Defendant in its Motion further defines "personal property" using Black's Law Dictionary as "an asset which can be 'owned,' meaning that it can in theory be conveyed to others" (Doc. 32, at 14) (citing PROPERTY, Black's Law Dictionary (11th ed. 2019) (defining "personal property" as "[a]ny movable or intangible thing that is subject to ownership and not classified as real property."); OWNERSHIP, Black's Law Dictionary (11th ed. 2019) (defining "ownership" as "[t]he bundle of rights allowing one to use, manage, and enjoy property, including the right to convey it to others.")). Through this, Defendant argues that education and enrollment in college-level courses do not qualify as personal property because one cannot "own" courses or convey them to others. In further support, Defendant argues that because it is a tax-exempt nonprofit entity, any call by Defendant about enrollment is not a telephone solicitation within the meaning of the FTSA.

The Southern District of Florida in *Soto Leigue v. Everglades Coll., Inc.*, No. 22-22307, 2022 WL 11770137 (S.D. Fla. Oct. 20, 2022), encountered a nearly identical argument—notably, by the same defendant now before this Court—on a motion to dismiss and offers a helpful analysis to this Court in addressing this issue. There, Defendant in *Soto Leigue* similarly argued that "because personal property is an asset that can be owned, and therefore conveyed, the educational services in the form of university courses alleged by Plaintiff are not consumer goods or services, and do not fall within the ambit of the FTSA." *Id.* at *3. Further, Defendant urged the district court to consider the issue within the context of family law and the equitable distribution of assets, in which education is not considered to be property. *Id.* (citing *Hughes v. Hughes*, 438 So. 2d 146, 150 (Fla. 3d DCA 1983) ("[A]n educational degree is not property subject to distribution as lump sum alimony because its value, which must be measured by future earning capacity, is too speculative to calculate.")). The plaintiff in *Soto Leigue* relied on viewing this issue within the context of the Fair Debt Collection Practices Act, in which courts have concluded that debt incurred as a result of education services is related to personal, family, or household purposes. *Id.* (citing *Urquiaga v. Fin. Bus. & Consumer Sols., Inc.*, No. 16-cv-62110-BLOOM/Valle, 2016 WL 6877735, at *3 (S.D. Fla. Nov. 22, 2016) (finding "consumer debt" element sufficiently pleaded where complaint alleged attempt to collect on debt related to a student loan)). The district court, however, found neither argument sufficiently analogous to the issue. *Id.*

***5** As noted by the district court in *Soto Leigue*, the FTSA does not specifically define "personal property," and when words are "conspicuously absent" from a definition of a statutory term, courts are not permitted "to add words to or rewrite a statute." *Id.*; *Smith ex rel. MS v. Crisp Reg'l Hosp., Inc.*, 985 F.3d 1306, 1309 (11th Cir. 2021). Here, Defendant asks this Court to rely on general definitions from Black's Law Dictionary and concepts from common law conversion to conclude that a college

degree is not personal property within the meaning of the FTSA. Moreover, Defendant contends that seeking money to further a nonprofit's purpose is not selling a consumer good or service.

First, Defendant's reliance on Black's Law Dictionary and common law conversion does not offer support in the context of consumer protection, which is pertinent here, but rather simply identifies a general definition of "property." As previously stated, the FTSA does not explicitly define "personal property" in its definition section, and when faced with such an issue, this Court is not permitted to rewrite the statute. *See* Fla. Stat. § 501.059; *Smith ex rel. MS*, 985 F.3d at 1309. Moreover, the FTSA, like its federal counterpart the TCPA, is a consumer protection statute, and because it "is remedial in nature, it should be construed liberally in favor of consumers." *Legg v. Voice Media Grp., Inc.*, 990 F. Supp. 2d 1351, 1354 (S.D. Fla. 2014). Thus, upon construing the FTSA liberally in favor of consumers, this Court will not read into the FTSA's definition section that "personal property" is limited on the basis of a general and granular definition of ownership.

Second, Defendant's argument that it falls outside of the consumer protection restrictions because it is a nonprofit organization must fail at this stage. As similarly recognized in *Soto Leigue*, Defendant essentially argues that the Florida Legislature in its drafting of the FTSA intended to treat communication related to education differently. But the Florida Legislature has proven that when it intends to exclude a certain category, particularly education-related, from a provision it enacts, then it does so explicitly. For example, the Florida Telemarketing Act contains a provision that specifically exempts soliciting for educational purposes. *See* Fla. Stat. § 501.604(2) ("The provisions of this part ... do not apply to: [a] person soliciting for religious, charitable, political, or educational purposes."). Notably, the Telemarketing Act and the FTSA have the same definition of "consumer goods or services," but the Florida Legislature decided not to include the specific exemption for communications related to educational purposes in the FTSA as it did in the Telemarketing Act. Accordingly, this Court reaches the same conclusion as the Southern District of Florida: "Had the Florida Legislature intended to exclude communications related to educational services or university courses from the ambit of the FTSA, it certainly could have done so explicitly." As such, it is recommended that Plaintiff's allegations regarding the communications about earning a college degree should be sufficient to state a claim under the FTSA.

C. Under the FTSA, Plaintiff is entitled to recover damages for a violation of the statute, not limited to $500

Lastly, Defendant argues that this Court should strike the language in the First Amended Complaint suggesting that class members are entitled to more than a single statutory penalty under the FTSA. Defendant contends that as a matter of law, class members are, at most, one statutory penalty regardless of how many calls the person received. The relevant FTSA provision states that "[a] called party who is aggrieved by a violation of this section may bring an action to ... [r]ecover actual damages or $500, whichever is greater." Fla. Stat. § 501.059(10)(a)(2). Defendant argues that the plain language of statute clearly limits recovery to a single award of statutory damages per action, irrespective of the number of violations of the statute.

***6** Defendant's cited authority appears to contradict its argument to a certain extent. Defendant first compares the FTSA with the Florida Consumer Collection Practices Act (FCCPA) in arguing that Plaintiff and other members of the class would be limited to a single award of statutory damages per action. Under the FCCPA, a debtor "may bring a civil action [for] violating the provisions of [the FCCPA]" and may recover "statutory damages as the court may allow, but not exceeding $1,000." Fla. Stat. § 559.77(1)–(2). Florida courts have interpreted this to clearly mean that statutory damages under the FCCPA are capped at $1,000 regardless of the existence of several statutory violations. *See Baldwin v. Regions Fin. Corp.*, 98 So. 3d 1210, 1213 (Fla. 3d DCA 2012) ("[R]egardless of whether the action is filed on an individual basis or as a class action, the 'additional statutory damages' are capped at $1,000."); *Arianas v. LVNV Funding, LLC*, 54 F. Supp. 3d 1308, 1310 (M.D. Fla. 2014) ("[T]he FCCPA limits statutory damages to $1,000 per action or awarded plaintiffs no more than $1,000 per action, even when a series of FCCPA violations exist."). But the FTSA and FCCPA fall short of being perfectly analogous for two reasons: (1) the FCCPA, unlike the FTSA, explicitly includes "but not exceeding" as crucial limiting language; and (2) the FCCPA categorizes a claim under the statute as an entire "civil action," interpreted as encompassing a series of FCCPA violations, rather than simply "a

violation" as delineated in the FTSA. Thus, Defendant's reliance on the FCCPA in arguing that the FTSA only authorizes a plaintiff to recovery a single statutory penalty regardless of how many violations may occur is misplaced.

Additionally, Defendant argues that the legislative history with respect to the 2021 amendment of the FTSA is clear that lawmakers contemplated a plaintiff could recover, at most, a single statutory penalty. Before 2021, the FTSA did not include a private right of action, but the March 2021 amendment added subsection (10)(a) to the FTSA and provided that "[a] called party who is aggrieved by a violation of this section [to] bring an action to ... [r]ecover actual damages or $500, whichever is greater." Defendant contends that in drafting this language the Legislature was aware that the TCPA, the FTSA's federal counterpart, awarded "actual monetary damages or up to $500 per violation" but intentionally left "per violation" out of the FTSA. Therefore, Defendant claims that if the Legislature had intended for a plaintiff to be able to recover $500 for each violation, then it would have clearly stated as much. In further support, Defendant notes several instances in Chapter 501 of the Florida Statutes where the Legislature provided for recovery "per violation" or "for each violation." [1] Defendant's argument is consistent with the Eleventh Judicial Circuit Court's decision in *Soto Leigue v. Everglades Coll. Inc.*, No. 2022-008872-CA-01 (Fla. 11th Cir. Ct. Jan. 3, 2024). There, the court held that the Florida Legislature intentionally excluded "for each violation" from the FTSA and found that the plaintiff was not entitled to recover multiple statutory penalties. *Id.* at 4.

This Court begins "where courts should always begin the process of legislative interpretation, and where they often should end it as well, which is with the words of the statutory provision." *United States ex rel. Hunt v. Cochise Consultancy, Inc.*, 887 F.3d 1081, 1088 (11th Cir. 2018) (quoting *Harris v. Garner*, 216 F.3d 970, 972 (11th Cir. 2000) (en banc)). The FTSA states in pertinent part that "[a] called party who is aggrieved by *a violation* of this section may bring an action to ... [r]ecover actual damages or $500, whichever is greater." Fla. Stat. § 501.059(10)(a)(2) (emphasis added). By its plain language, this provision of the FTSA provides for recovery in the form of actual damages or $500 upon *a violation* of the statute. It necessarily follows then that if a singular call amounts to a violation of the statute, then multiple calls would yield multiple violations of the statute and accordingly, recovery in the form of actual damages or $500 for each violation.

***7** In support of this interpretation, the Second Judicial Circuit Court has previously allowed for recovery of damages according to each violation of the FTSA. In *Henderson v. Preventative Primary Care*, the court found that the defendant knowingly and/or willfully sent 5 unsolicited text message advertisements to the plaintiff in violation of the FTSA. *Henderson v. Preventive Primary Care*, 2022 Fla. Cir. LEXIS 7152, *1 (Fla. 2d Cir. Ct. Nov. 14, 2022). Because of this, the court found that the plaintiff was entitled to an award of up to $1,500.00 [2] in statutory damages for each of the 5 unsolicited text messages sent by the defendant. *Id.*; Fla. Stat. § 501.059(10)(a)–(b). Thus, the court awarded the plaintiff "$7,500 (ie: $1,500 x. 5 texts) in statutory damages" under the FTSA. *Id.*

Defendant's argument essentially asks this Court to take greater issue in a discrepancy between "a violation" and "each violation" than an outright omission of language limiting recovery. But, while this Court recognizes that the Legislature may have been aware of the TCPA's "per violation" language and instead chose "a violation," it finds the Legislature's decision not to include limiting language more noteworthy and persuasive. Notably, the Legislature has demonstrated its intent to limit recovery in Defendant's cited authority rather than relying on silence to cap damages. *See* Fla. Stat. § 501.164 (authorizing "$1,000 per violation *with an aggregate total not to exceed* $25,000") (emphasis added); Fla. Stat. § 559.77(1)–(2) (authorizing "statutory damages as the court may allow, *but not exceeding* $1,000") (emphasis added). In the same manner that Defendant argues the Legislature's decision to exclude the language "per violation" is revealing as to its intent, the same is true as to the decision to exclude limiting language. *See Soto Leigue v. Everglades Coll. Inc.*, No. 2022-008872-CA-01 (Fla. 11th Cir. Ct. Jan. 3, 2024) ("Basic principles of statutory construction hold that '[w]here the legislature has used a term in one section of a statute but omitted the term in another section, the court [may] not read the term into the sections where it was omitted.' ") (quoting *Sunshine Towing, Inc. v. Fonseca*, 933 So. 2d 594, 595 (Fla. 1st DCA 2006)). This Court finds it reasonable to conclude that the Legislature's failure to include limiting language when it has done so clearly in the past is more concrete and convincing. As such, the Florida Legislature's failure to include language specifically limiting recovery under the FTSA to a singular statutory violation outweighs the minor discrepancy between "a violation" and "each violation." Accordingly, it is recommended that

Defendant's argument on the matter of statutory interpretation be rejected, and that the Court decline to strike the "for each violation" language from Plaintiff's FTSA claim.

IV. Conclusion

Defendant argues that both of Plaintiff's claims should be dismissed. First, Defendant contends that Plaintiff does not satisfy an essential element of his TCPA and FTSA claims to prove that the call was a prerecorded call, for lack of detail about the call. Second, as a matter of law, Defendant maintains that Plaintiff cannot satisfy an essential element of his FTSA claim to prove that the call was a "telephonic sales call." Defendant reasons then that neither a seat in a class nor an education is a consumer good that is transferrable between persons, thus warranting dismissal of the claim. Alternatively, Defendant argues that if this Court does not dismiss the case entirely then it should strike the "for each violation" language from Plaintiff's FTSA claim. Defendant asserts that an FTSA claimant is entitled to, at most a single statutory penalty, no matter how many calls the claimant received. As detailed above, the undersigned finds Defendant's arguments in the Motion unpersuasive at this juncture. Upon consideration, it is hereby RECOMMENDED that Defendant's Motion to Dismiss or Strike Plaintiff's First Amended Complaint (Doc. 32) be GRANTED to the extent that Plaintiff's First Amended Complaint is DISMISSED WITHOUT PREJUDICE, with leave to amend to provide greater detail as to the allegations of a prerecorded voice, and DENIED in all other respects.

***8** IT IS SO REPORTED in Tampa, Florida, this 4th day of March, 2024.

NOTICE TO PARTIES

A party has fourteen days from the date they are served a copy of this report to file written objections to this report's proposed findings and recommendations or to seek an extension of the fourteen-day deadline to file written objections. 28 U.S.C. § 636(b)(1)(C). A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. *See* 11th Cir. R. 3-1; 28 U.S.C. § 636(b)(1). **Should the parties wish to expedite the resolution of this matter, they may promptly file a joint notice of no objection.**

All Citations

Not Reported in Fed. Supp., 2024 WL 1657195

Footnotes

1 *See, e.g.*, Fla. Stat. § 501.019(3) (authorizing recovery of penalties "for each violation of this section"); Fla. Stat. § 501.922(1)(a) (same); Fla. Stat. § 501.2075 (same); Fla. Stat. § 501.142(3)(a) (same); Fla. Stat. § 501.0581(1) (same); Fla. Stat. § 501.164 (authorizing "$1,000 per violation with an aggregate total not to exceed $25,000"); Fla. Stat. § 501.72(1) (authorizing a penalty of "up to $50,000 per violation"); Fla. Stat. § 501.208(7) (authorizing forfeiture to the State of "not more than $5,000 for each violation"); Fla. Stat. § 501.1735(4)(a) (authorizing collection of a civil penalty "of up to $50,000 per violation of this section"); Fla. Stat. § 501.1377(7) (same); Fla. Stat. § 501.0051(12) ("A consumer reporting agency that willfully fails to comply with any requirement imposed under this section is subject to an administrative penalty in the amount of $500 for each violation").

2 Under Florida Statutes Section 501.059(10)(b), "[i]f the court finds that the defendant willfully or knowingly violated this section or rules adopted pursuant to this section, the court may, in its discretion, increase the amount of the award to an amount equal to not more than *three times* the amount available under paragraph (a)."

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