

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION**

Case Nos.

**9:18-cv-81394**

9:18-cv-81430

9:18-cv-81437

9:18-cv-81438

9:18-cv-81441

9:18-cv-81450

9:18-cv-81451

9:18-cv-81454

9:18-cv-81470

9:18-cv-81472

9:18-cv-81475

9:18-cv-81477

9:18-cv-81478

9:18-cv-81479

9:18-cv-81513

9:18-cv-81635

9:18-cv-81671

9:18-cv-81683

9:19-cv-80371

COY EVANS, et al,

Plaintiffs,

-VS-

OCWEN LOAN SERVICING, LLC,

Defendant.

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**AMENDED CONSOLIDATED COMPLAINT**

COMES NOW, Plaintiffs, JEFFREY ADAMS, BERNARD BROWN, ALBERT DUDLEY, COY EVANS, MICHAEL GIELLO, KATHERINE JUPIN, VICTORIA JUPIN, JAMES LATTANZIO, GEORGE NEBA, TIMOTHY OUDYK, WENDY PEARSON, DEBRA

PICURI, STANLEY ROBINSON, HAYLIE SCIOLI, JAMES SWEENEY and DAWN ZEHNER (hereinafter “Plaintiffs”), by and through the undersigned counsel, and sue Defendant, OCWEN LOAN SERVICING, LLC (hereinafter “Defendant”), and in support thereof respectfully allege violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”) and the Florida Consumer Collection Practices Act, Fla. Stat. 559.55, *et seq.* (“FCCPA”).

### **INTRODUCTION**

1. The TCPA was enacted to prevent companies like OCWEN LOAN SERVICING, LLC from invading American citizen’s privacy and to prevent abusive “robo-calls.”

2. “The TCPA is designed to protect individual consumers from receiving intrusive and unwanted telephone calls.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012).

3. “Senator Hollings, the TCPA’s sponsor, described these calls as ‘the scourge of modern civilization, they wake us up in the morning; they interrupt our dinner at night; they force the sick and elderly out of bed; they hound us until we want to rip the telephone out of the wall.’” 137 Cong. Rec. 30, 821 (1991). Senator Hollings presumably intended to give telephone subscribers another option: telling the autodialers to simply stop calling.” *Osorio v. State Farm Bank, F.S.B.*, 746 F. 3d 1242, 1256 (11<sup>th</sup> Cir. 2014).

4. According to the Federal Communications Commission (FCC), “Unwanted calls are far and away the biggest consumer complaint to the FCC with over 200,000 complaints each year – around 60 percent of all the complaints...Some private analysts estimate that U.S. consumers received approximately 2.4 billion robocalls per month in 2016.”

<https://www.fcc.gov/about-fcc/fcc-initiatives/fccs-push-combat-robocalls-spoofing>

### **JURISDICTION AND VENUE**

5. Jurisdiction and venue for purposes of this action are appropriate and conferred by 28 U.S.C. § 1331, Federal Question Jurisdiction, as this action involves violations of the TCPA.

6. Subject matter jurisdiction, federal question jurisdiction, for purposes of this action is appropriate and conferred by 28 U.S.C. § 1331, which provides that the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States; and this action involves violations of 47 U.S.C. § 227(b)(1)(A)(iii). See *Mims v. Arrow Fin. Servs., LLC*, S.Ct. 740, 748 (2012) and *Osorio v. State Farm Bank, F.S.B.*, 746 F.3d 1242, 1249 (11<sup>th</sup> Cir. 2014).

7. The current principal place of business of Defendant is in Palm Beach County, Florida. Accordingly, venue is appropriate with this Court under 28 U.S.C. §1391(b)(1), as it is the judicial district in the State where the Defendant resides.

### **FACTUAL ALLEGATIONS**

8. Plaintiff JEFFREY ADAMS, MICHAEL GIELLO and KATHERINE JUPIN are natural persons, and citizens of the State of Pennsylvania, residing in Bucks County, Pennsylvania.

9. Plaintiff BERNARD BROWN and VICTORIA JUPIN are natural persons, and citizens of the State of Pennsylvania, residing in Philadelphia County, Pennsylvania.

10. Plaintiff ALBERT DUDLEY, JAMES LATTANZIO, DEBRA PICURI, HAYLIE SCIOLI and JAMES SWEENEY are natural persons, and citizens of the State of Pennsylvania, residing in Montgomery County, Pennsylvania.

11. Plaintiff COY EVANS and WENDY PEARSON are natural persons, and citizens of the State of Pennsylvania, residing in Delaware County, Pennsylvania.

12. Plaintiff ALBERT DUDLEY is a natural person, and citizen of the State of Pennsylvania, residing in Montgomery County, Pennsylvania.

13. Plaintiff GEORGE NEBA is a natural person, and citizen of the State of Pennsylvania, residing in Chester County, Pennsylvania.

14. Plaintiff TIMOTHY OUDYK is a natural person, and citizen of the State of Pennsylvania, residing in Gloucester County, Pennsylvania

15. Plaintiff STANLEY ROBINSON is a natural person, and citizen of the State of Delaware, residing in New Castle County, Delaware.

16. Plaintiff DAWN ZEHNER is a natural person, and citizen of the State of New Jersey, residing in Bergen County, New Jersey.

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

18. Defendant is a corporation which was formed in Delaware with its principal place of business located at 1661 Worthington Road #100, West Palm Beach, Florida 33409, and which conducts business in the State of Florida through its registered agent, Corporation Service Company, located at 1201 Hays Street, Tallahassee, Florida 32301.

19. Plaintiffs know the calls were made using equipment which has the capacity to store numbers to be called and to dial such numbers automatically as specified by 47 U.S.C § 227(a)(1) (hereinafter “autodialer calls”). Plaintiffs will testify that they knew it was an autodialer because of the vast number of calls received over a prolonged time period.

20. Plaintiffs know that some or all of the calls the Defendant made to Plaintiffs’ cellular telephone number were made using an “automatic telephone dialing system” (ATDS)

which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator (including but not limited to a predictive dialer) or an artificial or prerecorded voice; and to dial such numbers as specified by 47 U.S.C § 227(a)(1).

21. Plaintiffs believe Defendant used an ATDS since he received calls from different agents of Defendant, sometimes numerous different agents on the same day.

22. Plaintiffs would continue to receive calls from different agents of Defendant on the day they made a payment, which is a common indicator of an ATDS.

23. Plaintiff will testify that they experienced other common indicators of an ATDS such as hearing a pause when he answered his phone before one of Defendant's agents came on the line.

24. Specifically, Defendant called Plaintiffs using the "Aspect" dialing system, which consists of functionally complimentary hardware and software components, including an integrated and interconnected database server that has the capacity to generate tables of 10-digit random and sequential numbers and then dial those numbers using outbound dialing software. Moreover, the "Aspect" dialing system uses its integrated random and sequential number generator functions to sort the telephone numbers that will be called during outbound call campaigns, and to determine the dialing sequence used during said calling campaigns. As such, the "Aspect" dialing system possessed at all material times the inherent and present capacity to operate as an ATDS as defined by the TCPA.

25. Plaintiffs received calls from various numbers belonging to Defendant beginning with the exchange 1-800-746-\*\*\*\*.

26. Plaintiffs received prerecorded messages from Defendant.

27. Defendant placed calls to Plaintiffs using an artificial or prerecorded voice in violation of 47 U.S.C. § 227(b)(1)(A).

28. Plaintiff is the subscriber, regular user and carrier of the cellular telephone number (215) \*\*\* - 2053, and was the called party and recipient of Defendant's calls.

29. Defendant placed an exorbitant number of calls to Plaintiff's cellular telephone (215) \*\*\* - 2053 in an attempt to collect on a mortgage debt.

30. On several occasions since Defendant's campaign of calls began, Plaintiffs spoke with Defendant's representatives by phone and instructed Defendant's agent(s) to stop calling their cellular telephone numbers.

31. During the aforementioned calls with Defendant's agents/representatives, Plaintiffs unequivocally revoked any express consent Defendant may have had for placement of telephone calls to Plaintiffs' aforementioned cellular telephone numbers by the use of an automatic telephone dialing system or a pre-recorded or artificial voice.

32. Each subsequent call the Defendant made to the Plaintiffs' aforementioned cellular telephone numbers was done so without the "express consent" of the Plaintiff.

33. Each subsequent call the Defendant made to the Plaintiffs' aforementioned cellular telephone numbers was knowing and willful.

34. Defendant called Plaintiffs on a daily basis, including weekends.

35. Defendant placed the following number of calls to each of the respective Plaintiff's cellular telephone in an attempt to collect a debt.

JEFFREY ADAMS: 33 calls

BERNARD BROWN: 233 calls

ALBERT DUDLEY: 372 calls

COY EVANS: Exact number of calls is not confirmed at this point.

MICHAEL GIELLO: Exact number of calls is not confirmed at this point.

KATHERINE JUPIN: Exact number of calls is not confirmed at this point.

VICTORIA JUPIN: Exact number of calls is not confirmed at this point.

JAMES LATTANZIO: Exact number of calls is not confirmed at this point.

GEORGE NEBA: 294 calls.

TIMOTHY OUDYK: 94 calls.

WENDY PEARSON: 27 calls.

DEBRA PICURI: 68 calls.

STANLEY ROBINSON: Exact number of calls is not confirmed at this point.

HAYLIE SCIOLI: 877 calls.

JAMES SWEENEY: Exact number of calls is not confirmed at this point.

DAWN ZEHNER: Exact number of calls is not confirmed at this point.

Due to the volume of calls Plaintiffs received over a lengthy period of time, they were not able to properly catalogue each and every call and it is expected that a review of Defendant's records and records maintained by Plaintiffs' cellular telephone carriers will confirm all of the unwanted calls placed to Plaintiffs by Defendant.

36. Defendant has a corporate policy to use an automatic telephone dialing system or a pre-recorded or artificial voice to individuals just as they did to Plaintiffs' cellular telephone numbers in this case.

37. Defendant has a corporate policy to use an automatic telephone dialing system or a pre-recorded or artificial voice, just as they did to the Plaintiffs' cellular telephone numbers in this case, with no way for the consumer, or Defendant, to remove the number.

38. Defendant's corporate policy is structured so as to continue to call individuals like Plaintiffs, despite these individuals explaining to Defendant they do not wish to be called.

39. Defendant has numerous other federal lawsuits pending against them alleging similar violations as stated in this Complaint.

40. Defendant has numerous complaints against it across the country asserting that its automatic telephone dialing system continues to call despite being requested to stop.

41. Defendant has had numerous complaints against it from consumers across the country asking to not be called, however Defendant continues to call these individuals.

42. Defendant's corporate policy provided no means for Plaintiffs to have their numbers removed from Defendant's call list.

43. Defendant has a corporate policy to harass and abuse individuals despite actual knowledge the called parties do not wish to be called.

44. Not one of Defendant's telephone calls placed to Plaintiffs were for "emergency purposes" as specified in 47 U.S.C. § 227(b)(1)(A).

45. Defendant willfully and/or knowingly violated the TCPA with respect to Plaintiffs.

46. From each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers, Plaintiffs suffered the injury of invasion of privacy and the intrusion upon their right of seclusion.



47. From each and every call without express consent placed by Defendant to Plaintiffs' cellular telephone numbers, Plaintiffs suffered the injury of the occupation of their cellular telephone line and cellular phone by unwelcome calls, making the phone unavailable for legitimate callers or outgoing calls while the phone was ringing from Defendant's call.

48. From each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers, Plaintiffs suffered the injury of unnecessary expenditure of their time. For calls answered, the time spent on the call was unnecessary as Plaintiffs repeatedly asked for the calls to stop. Even for unanswered calls, Plaintiffs had to waste time to unlock the phone and deal with missed call notifications and call logs that reflect the unwanted calls. This also impaired the usefulness of these features of Plaintiffs' cellular phones, which are designed to inform the user of important missed communications.

49. Each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers was an injury in the form of a nuisance and annoyance to the Plaintiffs. For calls that were answered, Plaintiffs had to go to the unnecessary trouble of answering them. Even for unanswered calls, Plaintiffs had to waste time to unlock the phone and deal with missed call notifications and call logs that reflected the unwanted calls. This also impaired the usefulness of these features of Plaintiffs' cellular phones, which are designed to inform the user of important missed communications.

50. Each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers resulted in the injury of unnecessary expenditure of Plaintiff's cell phone's battery power.

51. Each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers where a voice message was left which occupied space in Plaintiffs' phone or network.

52. Each and every call placed without express consent by Defendant to Plaintiffs' cellular telephone numbers resulted in the injury of a trespass to Plaintiffs' chattel, namely their cellular phone and cellular phone services.

53. As a result of the calls described above, Plaintiffs suffered an invasion of privacy. Plaintiffs were also affected in a personal and individualized way by stress, anxiety, nervousness, embarrassment, and interruption of work.

**COUNT I**  
**(Violation of the TCPA)**

54. Plaintiff fully incorporates and realleges paragraphs one (1) through fifty three (53) as if fully set forth herein.

55. None of the calls at issue were placed by Defendant to Plaintiffs' cellular telephone numbers with the "prior express consent" of Plaintiffs, as specified by the TCPA, 47 U.S.C. § 227(b)(1)(A).

56. Furthermore, Plaintiffs revoked any "prior express consent" Defendant had or mistakenly believed it had by verbally instructing Defendant on numerous occasions to stop placing calls to their aforementioned cellular telephone numbers.

57. Additionally, none of the calls at issue were placed by Defendant to Plaintiffs' cellular telephone numbers for "emergency purposes" as specified by the TCPA, 47 U.S.C. §227 (b)(1)(A).

58. Defendant willfully and/or knowingly violated the TCPA with respect to Plaintiffs by repeatedly placing non-emergency calls to their aforementioned cellular telephone numbers using an automated telephone dialing system and/or prerecorded or artificial voice message without Plaintiff's prior express consent, and after Plaintiff instructed Defendant to discontinue calling Plaintiffs, as specifically prohibited by the TCPA, 47 U.S.C. §227(b)(1)(A)(iii).

59. The TCPA provides Plaintiffs with a private right of action against Defendant for its violations of the TCPA, as described herein, pursuant to 47 U.S.C. § 227(b)(3), and permits both injunctive relief in addition to statutory damages.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant OCWEN for statutory damages, actual damages, costs, interest, an injunction from further violations of these parts, and for such other relief as this Court deems just and proper.

## **COUNT II**

### **VIOLATION OF THE FCCPA AGAINST OCWEN**

1. Plaintiff re-alleges and incorporates by reference the allegations of Paragraphs (1) through (53), as if fully set forth herein.

2. At all times material to this action Defendant was and is subject to and must abide by the laws of Florida, including section 559.72, Florida Statutes.

3. Defendant engaged in an act or omission prohibited under section 559.72(7), Florida Statutes, by willfully communicating with the Plaintiffs or any member of their family with such frequency as can reasonably be expected to harass the Plaintiffs.

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

5. The actions of Defendant have directly and proximately resulted in Plaintiffs' prior and continuing sustaining of damages as described by section 559.77, Florida Statutes, including, but not limited to: statutory damages, actual damages in the form of emotional pain and suffering, fear, worry, embarrassment, humiliation and loss of the capacity for the enjoyment of life; and attorneys' fees, interest and costs.

WHEREFORE, Plaintiffs respectfully demand judgment against Defendant OCWEN for statutory damages, actual damages, punitive damages, an injunction from similar conduct in the future, attorneys' fees, costs, interest and such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted,

*/s/David P. Mitchell*

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Counsel for Plaintiffs

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of July, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

/s/ David P. Mitchell  
David P. Mitchell, Esq.