

**IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA**

Case No.

RICHARD SANCRUZADO,
*individually and on behalf of all
those similarly situated,*

Plaintiff,

CLASS ACTION

JURY TRIAL DEMANDED

v.

INTERNATIONAL ASSOCIATION OF
CERTIFIED HOME INSPECTORS,

Defendant.

CLASS ACTION COMPLAINT

Plaintiff Richard Sancruzado (“Plaintiff”), *individually and on behalf of all those similarly situated*, sues Defendant International Association of Certified Home Inspectors (“Defendant”) for violating the Florida Consumer Collection Practices Act (“FCCPA”).

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction pursuant to Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$50,000, exclusive of interest, costs, and attorney’s fees.

2. This Court has personal jurisdiction over Defendant because Defendant is operating, present, and/or doing business within this jurisdiction and because the complained of conduct of Defendant occurred within Miami-Dade County, Florida.

3. Venue of this action is proper in this Court because, pursuant to Fla. Stat. § 47.011, et seq., the cause of action alleged below arose in Miami-Dade County, Florida.

4. Plaintiff has standing to maintain this action because Plaintiff suffered a legal injury as a result of Defendant's violations of the FCCPA, and because Plaintiff is not requesting an advisory opinion from this Court. Thus, Plaintiff has a sufficient stake in a justiciable controversy and seeks to obtain judicial resolution of that controversy.

PARTIES

5. Plaintiff is a natural person, and a citizen of the State of Florida, residing in Miami-Dade County, Florida.

6. Defendant is a Colorado corporation, with its principal place of business located in Boulder, Colorado.

DEMAND FOR JURY TRIAL

7. Plaintiff, respectfully, demands a trial by jury on all counts and issues so triable.

ALLEGATIONS

8. On a date better known by Defendant, Defendant began attempting to collect a debt (the "Consumer Debt") from Plaintiff.

9. The Consumer Debt is an obligation allegedly had by Plaintiff to pay money arising from a transaction between the creditor of the Consumer Debt, Defendant, and Plaintiff (the "Subject Service").

10. Plaintiff is the alleged debtor of the Consumer Debt.

11. The Subject Service was primarily for personal, family, or household purposes.

12. The FCCPA defines "communication" as "the conveying of information regarding a debt directly or indirectly to any person through any medium." Fla. Stat. § 559.55(2).

13. Defendant is a "person" within the meaning of Fla. Stat. § 559.72.

14. Section 559.72(17) of the FCCPA prohibits persons from communicating with a debtor between the hours of 9:00 PM and 8:00 AM in the debtor's time zone without the prior consent of the debtor.

THE COMMUNICATION

15. On January 8, 2024, Defendant sent an electronic mail communication to Plaintiff (the "Communication").

16. Attached as Exhibit "A" is a copy of the Communication.

17. The Communication was a communication in connection with the collection of the Consumer Debt.

18. The Communication was sent from fast-reply@internachi.org and delivered to Plaintiff's personal e-mail address.

19. The Communication advised: "[w]e're having trouble processing your InterNACHI dues payment of \$49.00. Please update your payment information when you have a moment."

20. The Communication was sent by Defendant to Plaintiff at 12:01 AM in Plaintiff's time zone.

21. The Communication was received by Plaintiff from Defendant at 12:01 AM in Plaintiff's time zone.

CLASS ALLEGATIONS

PROPOSED CLASS

22. Plaintiff brings this lawsuit as a class action on behalf of Plaintiff, individually, and on behalf of all other similarly situated persons. The "Class" that Plaintiff seeks to represent is the below defined "FCCPA Class."

23. The “FCCPA Class” consists of: [1] all persons with Florida addresses [2] that Defendant or someone on Defendant’s behalf [3] sent an electronic mail communication to [4] between 9:00 PM and 8:00 AM [5] in connection with the collection of a consumer debt.

24. Defendant and its employees or agents are excluded from the Class.

25. Plaintiff does not know the number of members in the Class but believes the number is in the several thousands, if not more.

NUMEROSITY

26. Upon information and belief, Defendant has sent thousands of electronic mail communications to Florida consumers between 9:00 PM and 8:00 AM, whereby such electronic mail communication(s) violate 559.72(17). The members of the Class, therefore, are believed to be so numerous that joinder of all members is impracticable.

27. The exact number and identities of the Class members are unknown at this time and can be ascertained only through discovery. Identification of the Class members is a matter capable of ministerial determination from Defendant’s e-mail records.

COMMON QUESTIONS OF LAW AND FACT

28. There are numerous questions of law and fact common to the Class which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Class are: [1] Whether Defendant sent an electronic communication to Plaintiff and members of the Class in connection with the collection of a consumer debt; [2] Whether Defendant sent such communication(s) between 9:00 PM and 8:00 AM; [3] Whether Defendant should be enjoined from such conduct in the future.

29. The common questions in this case are capable of having common answers. If Plaintiff’s claim that Defendant routinely sends electronic mail communication(s) that violate

559.72(17) is accurate, Plaintiff and members of the Class will have identical claims capable of being efficiently adjudicated and administered in this case.

TYPICALITY

30. Plaintiff's claims are typical of the claims of the members of the Class, as they are all based on the same factual and legal theories.

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

31. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Class and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

SUPERIORITY

32. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Class is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by members of the Class are in the millions of dollars, the individual damages incurred by each member of the Class resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual members of the Class prosecuting their own separate claims is remote, and, even if every member of the Class could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

33. The prosecution of separate actions by members of the Class would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

COUNT 1
VIOLATION OF FLA. STAT. § 559.72(17)

34. Plaintiff, individually and on behalf of the FCCPA Class, incorporates by reference ¶¶ 8-33 of this Class Action Complaint.

35. Pursuant to § 559.72(17) of the FCCPA, in collecting consumer debts, no person shall: “[c]ommunicate with the debtor between the hours of 9 p.m. and 8 a.m. in the debtor’s time zone without the prior consent of the debtor.” Fla Stat. § 559.72(17) (emphasis added).

36. As set forth above, Defendant sent an electronic communication to Plaintiff in connection with the collection of the Consumer Debt. See Exhibit A (the “Electronic Communication”). The Electronic Communication was sent to Plaintiff between the hours of 9:00 PM and 8:00 AM in the time zone of Plaintiff. Defendant did not have the consent of Plaintiff to communicate with Plaintiff between the hours of 9:00 PM and 8:00 AM. As such, by and through the Electronic Communication, Defendant violated § 559.72(17) of the FCCPA.

37. WHEREFORE, Plaintiff, individually and on behalf of the FCCPA Class, requests relief and judgment as follows:

- (a) Determine this action is a proper class action under Florida Rule of Civil Procedure;
- (b) A declaration that Defendant’s conduct and/or practices described herein violate § 559.72(17);
- (c) Award Plaintiff and members of the FCCPA Class statutory damages pursuant to Fla. Stat., § 559.77(2);
- (d) Enjoin Defendant from future violations of Fla. Stat., § 559.72(17) with respect to Plaintiff and the FCCPA Class;
- (e) Award Plaintiff and members of the FCCPA Class reasonable attorneys’ fees and costs, including expert fees, pursuant to Fla. Stat., § 559.77(2); and
- (f) Any other relief that this Court deems appropriate under the circumstances.

Dated: January 30, 2024

Respectfully Submitted,

/s/ Zane C. Hedaya

JIBRAEL S. HINDI, ESQ.

Florida Bar No.: 118259

E-mail: jibrael@jibraellaw.com

JENNIFER G. SIMIL, ESQ.

Florida Bar No.: 1018195

E-mail: jen@jibraellaw.com

ZANE C. HEDAYA, ESQ.

Florida Bar No.: 1048640

E-mail: zane@jibraellaw.com

The Law Offices of Jibrael S. Hindi

110 SE 6th Street, Suite 1744

Fort Lauderdale, Florida 33301

Phone: 954-907-1136

COUNSEL FOR PLAINTIFF

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