

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 1:21cv22417

CARLOS GARCIA,

Plaintiff,

vs.

TRUEACCORD CORP. and  
PAYPAL, INC.

Defendants.

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**COMPLAINT**

1. Plaintiff alleges violation of the Fair Debt Collection Practices Act, 15 U.S.C. §1692 et seq. ("FDCPA") and the Florida Consumer Collection Practices Act, Fla. Stat. §559.55 et seq. ("FCCPA"). Plaintiff also alleges violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. ("TCPA") against the Defendant TrueAccord, Corp (hereinafter referred to as "TrueAccord"). Plaintiff alleges that the Defendant TrueAccord incessantly and unlawfully called the Plaintiff's cellular phone using an automatic telephone dialing system or auto-dialer and a pre-recorded or artificial voice. Defendant TrueAccord made these calls in an attempt to collect an alleged debt that is not owed by the Plaintiff. Defendant PayPal incessantly and unlawfully emailed and texted the Plaintiff in an attempt to collect an alleged debt that is not owed by the Plaintiff. Defendants' actions were in violation of FDCPA and FCCPA.

### LEGAL STANDARD

2. The characterization of the FDCPA as a strict liability statute is generally accepted. *See, e.g., LeBlanc v. Unifund CCR Partners, 601 F.3d 1185, 1190 (11th Cir. 2010)*. Pursuant to Florida Statute §559.55(2), (“FCCPA”), “nothing in this part shall be continued to limit or restrict the applicability of the Fair Debt Collection Practices Act to consumer collection practices in this state. This part is in addition to the requirements and regulations of the federal act. In the event of any inconsistency between any provision of this part and any provision of the federal act, the provision which is more protective of the consumer shall prevail.”

### JURISDICTION

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331, §1337, and §1367, and pursuant to 15 U.S.C. § 1692 et seq. (“FDCPA”) and the Florida Consumer Collection Practices Act, Fla. Stat. §559.55 et seq. (“FCCPA”). Under 28 U.S.C. 1367(a), this Court has supplemental jurisdiction over Plaintiff’s stated FCCPA claims in that it is so related to the federal TCPA and FDCPA claims that they form part of the same case or controversy under Article III of the United States Constitution. Additionally, federal courts have jurisdiction over suits arising under TCPA. *Mims v. Arrow Financial Services, LLC, 132 S. Ct. 740 (2012)*.

4. This action arises out of Defendants’ violations of the FDCPA and FCCPA, in their illegal effort to collect a consumer debt from Plaintiff. This action also arises out of Defendant TrueAccord’s violations of TCPA, which prohibits any person "to make any call (other than for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or any 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." 47 U.S.C. §227(b)(1)(A).

5. Venue is proper in this District because the acts and transactions complained of occurred here, Plaintiff resides here, both Defendants transact and/or conduct business here, and both Defendants illegally attempted to collect a debt from Plaintiff within this venue. In addition, Defendant True Accord places calls into this District.

#### PARTIES

6. Plaintiff, Carlos Garcia, is a natural person who resides in the City of Aventura, County of Miami-Dade, State of Florida, and is a "consumer" as that term is defined by 15 U.S.C. § 1692a(3). Plaintiff is the cellular subscriber and has dominion over the cellular telephone that Defendant TrueAccord was calling and to which PayPal was sending text messages.

7. Defendant TRUEACCORD, CORP, (hereinafter "TrueAccord") is a collection agency operating from an address of 16011 College Boulevard, Suite 130, Lenexa, KS 66219, is a "debt collector" as that term is defined by 15 U.S.C. § 1692a(6) and is incorporated under the laws of the State of Delaware.

8. Defendant TrueAccord regularly uses the email, U.S. postal mail, and telephone in its business, the principal purpose of which is the collection of debts. Defendant TrueAccord regularly collects or attempts to collect debts for other parties.

9. Defendant TrueAccord is a debt collector that uses, among other things, an automated telephone dialing system to engage in debt collection practices.

10. TrueAccord is a "debt collector" as defined in the FDCPA and FCCPA, under 15 U.S.C. §1692a(6) and Florida Statute §559.55(6).

11. Defendant TrueAccord was acting as a debt collector with respect to the collection of Plaintiff's alleged debt.

12. At all relevant times, Plaintiff had an account in his name with Defendant PayPal, Inc. (hereinafter referred to as “PayPal”). At all relevant times, Plaintiff’s PayPal account was established to hold funds used primarily for his personal use.

13. At all relevant times, Plaintiff had a an “account” with PayPal as that term is defined by 15 U.S.C. § 1693a(2). PayPal is an e-commerce business that facilitates money transfers through the internet and acts as an intermediary by accepting funds on behalf of a buyer and deposits said funds into the account of a seller.

14. Defendant PayPal is a business entity that conducts/transacts business within the State of Florida.

15. Defendant PayPal has a principal address of 2211 North First Street, c/o Corporate Legal Department, San Jose, California 95131, and is incorporated under the laws of the State of Delaware.

16. At all relevant times, Defendant PayPal acted through its duly authorized agents, employees, officers, directors, members heirs assigns, successors, principals, trustees, sureties, subrogees, representatives, and insurers.

17. At all relevant times, Defendant PayPal was a “financial institution” as that terms is defined by 15 U.S.C. § 1693a(7), as acted as a “creditor” as defined by Florida Statute §559.55 of FCCPA.

#### FACTUAL ALLEGATIONS

18. Plaintiff incurred a financial obligation that was primarily for personal, family, or household purposes and is therefore a “debt” as that term is defined by 15 U.S.C. § 1692a(5) and Florida Statute §559.55(1).

19. Sometime thereafter, PayPal consigned, placed or otherwise transferred the alleged debt to Defendant TrueAccord for collection from this Plaintiff.

20. On or about December 5, 2020, Plaintiff purchased shoes from Finish Line in the amount of \$77.04. Plaintiff authorized PayPal to make payment on his behalf for \$77.04 and entered into an agreement with same to pay the balance to PayPal in four payments of \$19.26 each. Plaintiff's user agreement with PayPal consisted of a 'Pay in 4' plan allowing customers the ability to pay back purchases to PayPal in four separate payments.

21. On or about December 6, 2020 and December 20, 2020, PayPal debited two payments in the amount of \$19.26 each. Plaintiff subsequently received notification from Finish Line that the purchased shoes were out of stock. As such, the sales transaction was cancelled. Consequently, on or about December 22, 2020, PayPal credited \$38.52 to Plaintiff's bank account, representing the two prior debits of \$19.26 each.

22. Despite the cancellation of the order, Defendant PayPal incessantly attempted to collect from the Plaintiff the remaining two payments of \$19.26 each under the 'Pay in 4' plan, plus late fees. Both Defendants PayPal and TrueAccord sought to collect from Plaintiff an alleged debt arising from transactions incurred for personal, family or household purposes.

23. From December 2020 through present day, Plaintiff has explained to Defendant PayPal repeatedly that the transaction was cancelled because the merchandise was not available. In each instance, PayPal has acknowledged in telephone conversations that Plaintiff does not owe a debt. Even though Plaintiff does not owe a debt, Defendant PayPal transferred Plaintiff's alleged debt to Defendant TrueAccord for collection. Due to Defendants' PayPal's and TrueAccord's poor account resources and deficient billing practices, Plaintiff continues to be charged an invalid and improper debt on an account that Plaintiff is not legally liable for.

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