

COMMONWEALTH OF MASSACHUSETTS
County of Suffolk
The Superior Court

Robert Nightingale, *on behalf of himself and all:
others similarly situated,*

Plaintiff,

v.

National Grid USA Company, Inc.,

Defendant.

Civil Docket #:



CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

For this Class Action Complaint, Plaintiff Robert Nightingale, by and through undersigned counsel, pleading on his own behalf and on behalf of all others similarly situated, states as follows:

INTRODUCTION

1. This action arises out of Defendant National Grid USA Company, Inc.’s (“National Grid” or “Defendant”) repeated violations of the Massachusetts Consumer Protection Act, M.G.L. c. 93A § 2, *et seq.* (“MCPA”), and Massachusetts Debt Collection Regulations, 940 CMR § 7.00, *et seq.* (“MDCR”), in its illegal efforts to collect consumer debts.

2. In 2011, then-Massachusetts Attorney General Martha Coakley launched an investigation to bring Massachusetts debt collection practices “up-to-date . . . to be consistent with other state and federal agencies” and to “ensure that the playing field is level for both creditors and consumer so that all parties are better protected.” *See*

<http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-03-01-debt-collection-regulations.html> (last visited Oct. 8, 2018).

3. As a result of that investigation, Attorney General Coakley regulated it an “unfair or deceptive act or practice for a creditor” to “initiate a communication with any debtor via telephone, either in person or via text messaging or recorded audio message, in excess of two such communications in each seven-day period to either the debtor’s residence, cellular telephone, or other telephone number provided by the debtor as his or her personal telephone number.” 940 CMR § 7.04(1)(f).

4. The Attorney General has advised, and the Massachusetts Supreme Court recently confirmed, that the regulation means debt collectors cannot place more than two collection calls per week to Massachusetts consumers, regardless of the outcome of the call. *See Armata v. Target Corp.*, 480 Mass. 14, 15–16, 23, 99 N.E.3d 788, 790, 795-96 (2018) (“The regulation applies to any attempted telephonic communication by a creditor to a debtor in an effort to collect a debt, so long as . . . the creditor is able to reach the debtor or to leave a voicemail message for the debtor” and “The regulation does not limit ‘communication[s],’ but, rather, the initiation of communications. The fact that [creditor] did not successfully directly convey information to [debtor] is unimportant, because [creditor] nevertheless initiated the process of conveying information to [debtor] via telephone.”) (quoting 940 CMR § 7.04(1)(f)).

5. It is National Grid’s practice to call Massachusetts consumers more than twice a week to attempt to collect debts. National Grid placed more than two collection calls to Plaintiff Robert Nightingale (“Plaintiff”) within a seven-day period, violating the express provisions of § 7.04(1)(f). Plaintiff seeks to represent all consumers similarly situated. Plaintiff seeks injunctive

relief to end National Grid's illegal practice, declaratory relief to make National Grid's violations known to the class, actual and statutory damages, as well as attorneys' fees and costs.

PARTIES

6. Plaintiff, Robert Nightingale, is an adult individual residing in Allston, Suffolk County, Commonwealth of Massachusetts, and is a "debtor" as defined by 940 C.M.R. § 7.03.

7. Defendant, National Grid USA Company, Inc., is a Massachusetts business entity with an address of 40 Sylvan Road, Waltham, Massachusetts 02451, and is a "creditor" as defined by 940 CMR § 7.03.

ALLEGATIONS APPLICABLE TO ALL COUNTS

A. The Debt

8. Plaintiff allegedly incurred a financial obligation (the "Debt").

9. The Debt arose from services which were primarily for family, personal or household purposes and which meet the definition of a "debt" under 940 CMR § 7.03.

10. National Grid attempted to collect the Debt from Plaintiff and, as such, initiated and engaged in "communications" as defined in 940 CMR § 7.03.

B. National Grid Engages in Unfair Business Practices

11. In or around June 2018, National Grid began calling Plaintiff's cellular telephone in an attempt to collect the Debt.

12. National Grid called Plaintiff's cell phone at number 857-XXX-7603.

13. National Grid called Plaintiff from, *inter alia*, telephone number 866-910-7925.

14. National Grid called Plaintiff at an excessive and harassing rate, placing more than two calls within a seven-day period. For example, National Grid called Plaintiff's cellular

telephone on June 20, 2018 at 10:43 a.m., June 21, 2018 at 9:51 a.m., June 22, 2018 at 9:44 a.m. and 1:22 p.m., and on June 23, 2018 at 1:22 p.m.

C. Plaintiff Suffered Actual Damages and Injury

15. Plaintiff suffered actual damages as a result of National Grid's unlawful conduct.

16. As a direct consequence of National Grid's acts, practices and conduct, Plaintiff suffered anger, anxiety, emotional distress, fear, frustration and embarrassment.

17. National Grid's repeated calls were distracting and an inconvenience to Plaintiff, and an invasion of his personal privacy.

18. National Grid's repeated calls wasted Plaintiff's time and energy spent tending to National Grid's calls.

D. Plaintiff's 93A Demand Letter

19. On July 3, 2018, Plaintiff mailed a demand letter to National Grid via certified mail, pursuant to M.G.L. c. 93A, § 9(3). Plaintiff's demand letter complained that National Grid violated M.G.L. c. 93A, § 2 and 940 CMR § 7.04(1)(f) by placing more than two calls in a seven-day period to Plaintiff's cellular telephone. The letter sought, *inter alia*, statutory and actual damages, double or treble damages, and for National Grid to cease the illegal calls.

20. The demand letter was delivered to National Grid on July 9, 2018.

21. To date, National Grid has not responded to Plaintiff's demand letter.

CLASS ACTION ALLEGATIONS

A. The Class

22. Plaintiff brings this case as a class action pursuant to M.G.L. c. 93A, § 9(2) and Rule 23 of the Massachusetts Rules of Civil Procedure.

23. Plaintiff seeks to represent the following class (the "Class"):

All consumers residing in the Commonwealth of Massachusetts who, within four years prior to the filing of this action, received in excess of two telephone calls regarding a debt from National Grid within a seven-day period to their residence, cellular telephone, or other provided telephone number.

B. Numerosity

24. As its regular business practice, National Grid hounds Massachusetts consumers with numerous debt collection calls per week. Class members are believed to be so numerous that joinder of all members is impractical.

25. The exact number and identities of class members are unknown at this time and can only be ascertained through discovery. Identification of the class members is a matter capable of ministerial determination from Defendant's records.

26. Plaintiff reasonably believes that there are thousands of Massachusetts consumers who are members of the Class.

C. Common Questions of Law and Fact

27. There are common questions of law and fact raised in this Complaint which predominate over any questions affecting only individual class members.

28. The following questions of law and fact common to the class members are ripe for determination and are raised herein:

- a. Whether Defendant violated M.G.L. c. 93A § 2 and 940 CMR § 7.04(1)(f) by placing in excess of two debt collection calls per debt per seven-day period; and
- b. Whether Defendant willfully and knowingly placed in excess of two debt collection calls per debt per seven-day period.

D. Typicality

29. Plaintiff's claims are typical of the claims of the class members, since each of the claims arises from receiving in excess of two debt collection calls within a seven-day period.

E. Protecting the Interests of Class Members

30. Plaintiff will fairly and adequately represent the interests of class members, all of whom are victims of Defendant's unlawful conduct.

31. All of the class members' claims arise from the very course of conduct and specific activities complained of herein and require application of the same legal principles.

32. Plaintiff has retained counsel experienced in bringing class actions and debt collection abuse claims and who stands ready, willing and able to represent the Class.

F. Proceeding Via Class Action is Superior and Advisable

33. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

34. Absent a class action, most members of the class would find the cost of litigating their claims to be prohibitive and, therefore, would have no effective remedy at law.

35. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the court and the litigants and promotes consistency and efficiency of adjudication.

36. Prosecution of separate actions could result in inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Defendant and other debt collectors. Conversely, adjudications with respect to individual class members would be dispositive of the interest of all other class members.

37. The amount of money at issue is such that proceeding by way of a class action is the only economical and sensible manner in which to vindicate the injuries sustained by Plaintiffs and the other class members.

COUNT I
VIOLATIONS OF THE MCPA, M.G.L. c. 93A, § 2,
AND MDCR, 940 CMR § 7.04(1)(f)

38. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

39. Defendant initiated communication via telephone in excess of two times within a seven-day period regarding a Debt to Plaintiff's cellular telephone, in violation of 940 CMR § 7.04(1)(f).

40. Defendant's failure to comply with 940 CMR § 7.04(1)(f) constitutes an unfair or deceptive act in violation of M.G.L. c. 93A § 2.

41. Defendant willfully or knowingly violated 940 CMR § 7.04(1)(f), and as such, Plaintiff is entitled to double or treble damages plus reasonable attorney's fees and costs.

42. Pursuant to M.G.L. c. 93A, § 9, Plaintiff is entitled to and does seek equitable relief in the form of an injunction preventing Defendant from placing in excess of two collection calls within any seven days to any Massachusetts consumers' telephone.

43. Pursuant to M.G.L. c. 93A, § 9, Plaintiff is entitled to and does seek declaratory relief such that:

- Defendant knowingly and willfully violated M.G.L. c. 93A c. 93A, § 2 and 940 CMR § 7.04(1)(f) as to Plaintiff and the class; and
- It has been Defendant's practice and history to place in excess of two debt collection telephone calls within seven days to Massachusetts consumers.

DEMAND FOR RELIEF

WHEREFORE, Plaintiff asks that the Court enter judgment in favor of Plaintiff and the Class and against Defendant, as follows:

- A) An injunction preventing Defendant from placing in excess of two collection calls within any seven days to any Massachusetts consumers' telephone;
- B) Declaratory relief as prayed herein;
- C) Awarding actual damages as provided under the MCPA, pursuant to M.G.L. c. 93A § 9, including treble damages for Defendant's willful conduct;
- D) Awarding statutory damages as provided under the MCPA, pursuant to M.G.L. c. 93A § 9, including treble damages for Defendant's willful conduct;
- E) Awarding reasonable attorney fees, litigation expenses and costs incurred pursuant to M.G.L. c. 93A § 9;
- F) Granting such other and further relief this Court deems just and appropriate.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: October 10, 2018

PLAINTIFF,
ROBERT NIGHTINGALE

By Plaintiff's attorneys,

LEMBERG LAW, LLC



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