

**IN THE CIRCUIT COURT OF THE
FOURTEENTH JUDICIAL CIRCUIT IN
AND FOR BAY COUNTY, FLORIDA**

CASE NO.: 24-000584CA

TERESA FRECHOU, on behalf of herself)
and all others similarly situated,)

Plaintiff,)

v.)

PROGRESSIVE DIRECT INSURANCE)
COMPANY)

Defendant.)
_____)

CLASS ACTION

JURY TRIAL DEMANDED

FIRST AMENDED CLASS ACTION COMPLAINT

Plaintiff Teresa Frechou (“Plaintiff”), individually and on behalf of all others similarly situated, brings this class action against Defendant Progressive Direct Insurance Company (“Defendant”) for violations of the Florida Consumer Collection Practices Act (“FCCPA”), Fla. Stat. §§ 559.55, *et seq.*

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction under Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2), as 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 operates in, does business in, and is otherwise present in this jurisdiction, and Defendant’s conduct at issue occurred in Bay County, Florida.

3. Venue is proper in this Court under Fla. Stat. § 47.011, *et seq.*, because the cause of action alleged herein accrued in this County.

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

PARTIES

5. Plaintiff is a natural person residing in Bay County, Florida.

6. Defendant Progressive Direct Insurance Company, is an Ohio corporation with its principal place of business in Mayfield Village, Ohio.

DEMAND FOR JURY TRIAL

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

FACTUAL ALLEGATIONS

8. Section 559.72(17) of the FCCPA prohibits a person from communicating with a debtor between the hours of 9:00 p.m. and 8:00 a.m. in the debtor's time zone, without the prior consent of the debtor.

9. 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).

10. Despite this clear prohibition, Defendant routinely communicates with debtors in Florida between the hours of 9:00 p.m. and 8:00 a.m., without the prior consent of the debtor.

ALLEGATIONS SPECIFIC TO PLAINTIFF

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

12. 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”).

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

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

15. On April 17, 2024, Defendant sent an electronic mail communication to Plaintiff (the “First Communication,” attached as **Exhibit A**).

16. The First Communication was a communication regarding the Consumer Debt.

17. The First Communication was sent from customerservice@e.progressive.com and was delivered to Plaintiff’s personal email address.

18. The First Communication advised: “Your bill is ready” and “your next payment of **\$198.78 for your auto policy is due on 4/21/2024**. It’s easy to pay now online, or you can schedule a future payment.” (original emphasis).

19. The First Communication was sent by Defendant to Plaintiff at 10:07 p.m. in Plaintiff’s time zone.

20. The First Communication was received by Plaintiff from Defendant at 10:07 p.m. in Plaintiff’s time zone.

21. On June 25, 2024, Defendant sent an electronic mail communication to Plaintiff (the “Second Communication,” attached as **Exhibit B**).

22. The Second Communication was a communication regarding the Consumer Debt.

23. The Second Communication was sent from customerservice@e.progressive.com and was delivered to Plaintiff’s personal email address.

24. The Second Communication advised: “**Your installment bill is now available**” and “[t]he current amount due for your policy is now available.” (original emphasis).

25. The Second Communication was sent by Defendant to Plaintiff at 11:44 p.m. in Plaintiff’s time zone.

26. The Second Communication was received by Plaintiff from Defendant at 11:44 p.m. in Plaintiff’s time zone.

CLASS ALLEGATIONS

27. Plaintiff brings this lawsuit individually and on behalf of a proposed Class of similarly situated persons (the “Class”), defined as follow:

All persons in Florida who received the same or similar e-mails as Plaintiff, from Defendant or someone acting on Defendant’s behalf, between the hours of 9:00 p.m. and 8:00 a.m.

28. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

29. Excluded from the Class are Defendant and its officers, directors, agents, trustees, parents, children, corporations, trusts, representatives, employees, principals, servants, partners, joint venturers or entities controlled by Defendant, and their heirs, successors, assigns, or other persons or entities related to or affiliated with Defendant and/or their officers and/or directors, the Judge assigned to this action, and any member of the Judge’s immediate family.

30. **Numerosity.** The members of the Class are so numerous that individual joinder is impracticable. Upon information and belief, the Class includes several thousand members, if not more. Defendant has sent thousands of electronic mail communications to Florida consumers between the hours of 9:00 p.m. and 8:00 a.m., in violation of Fla. Stat. § 559.72(17). The exact

number and identities of the Class members are unknown at this time but can be ascertained through discovery, and identification of the Class members is a matter capable of ministerial determination from Defendant's email records.

31. ***Predominating common questions of law and fact.*** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions will produce common answers that will drive resolution of the litigation and include, but are not limited to, the following:

- a) Whether Defendant sent an electronic communication to Plaintiff and members of the Class in connection with the collection of a consumer debt;
- b) Whether Defendant sent such communication(s) between the hours of 9:00 p.m. and 8:00 a.m.; and
- c) Whether Defendant should be enjoined from such conduct in the future.

32. ***Typicality.*** 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, and Plaintiff is not subject to any unique defenses.

33. ***Adequacy of Representation.*** Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has retained counsel highly experienced in complex consumer class action litigation, and Plaintiff intends to vigorously prosecute this action. Further, Plaintiff has no interests that are antagonistic to those of the members of the Class.

34. ***Superiority.*** 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 suffered

by each member of the Class resulting from Defendant' 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.

35. 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.

CAUSES OF ACTION

COUNT 1

Violation of the FCCPA, Fla. Stat. § 559.72(17)

36. Plaintiff realleges and incorporates by reference the allegations in the paragraphs above.

37. Pursuant to Section 559.72(17) of the FCCPA, 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).

38. Defendant is a “person” within the meaning of Fla. Stat. § 559.72.

39. As set forth above, Defendant sent electronic communications to Plaintiff in connection with the collection of the Consumer Debt. *See Exhibits A & B* (the “Electronic Communications”).

40. The Electronic Communications were sent to Plaintiff between the hours of 9:00 p.m. and 8:00 a.m. in Plaintiff’s time zone.

41. Plaintiff did not consent to receive Defendant’s communications between the hours of 9:00 p.m. and 8:00 a.m.

42. As such, by and through the Electronic Communication, Defendant violated Section 559.72(17) of the FCCPA.

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

- A. An Order certifying the Class, appointing Plaintiff as Class Representative, and Plaintiff's counsel as Class Counsel;
- B. An Order declaring that Defendant's conduct and/or practices described herein violate Fla. Stat. § 559.72(17);
- C. An award of statutory damages under Fla. Stat. § 559.77(2) to Plaintiff and members of the Class;
- D. An Order enjoining Defendant from committing future violations of Fla. Stat. § 559.72(17) with respect to Plaintiff and the FCCPA Class;
- E. An award to Plaintiff and the Class of their reasonable attorneys' fees and costs, including expert fees, pursuant to Fla. Stat. § 559.77(2); and
- F. Any other relief that this Court deems just and proper.

Dated: October 9, 2024

Respectfully submitted,

/s/ Chris Gold

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Counsel for Plaintiff and the Proposed Class

EXHIBIT A

From: Progressive <customerservice@e.progressive.com>
Sent: Wednesday, April 17, 2024 10:07:32 PM
To: tisa_girl@hotmail.com <tisa_girl@hotmail.com>
Subject: Your Progressive bill is now available



Your bill is ready

Pay or view bill

Just a reminder, your next payment of **\$198.78 for your auto policy is due on 04/21/2024**. It's easy to pay right now online, or you can [schedule a future payment](#).

Your Payment Details

Amount Due

\$198.78

Due Date

04/21/2024

Policy Number

975119070

Have a question?

Give us a call at [1-800-999-8781](tel:1-800-999-8781).



Download the [Progressive app](#) for easy access, any time.

Your Policy

TERESA FRECHOU

[Florida Auto 975119070](#)

[Contact](#)

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Please do not reply to this email—this mailbox is not monitored.

View this email [online](#).

Policy underwritten by Progressive Select Insurance Company

Progressive Direct Insurance Company
6300 Wilson Mills Rd, Mayfield Village, OH 44143

7/1/24, 5:31 PM

Gold Law PA Mail - Fwd: Your Progressive bill is now available

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EXHIBIT B

From: Progressive <customerservice@e.progressive.com>
Sent: Wednesday, June 5, 2024 11:44:55 PM
To: tisa_girl@hotmail.com <tisa_girl@hotmail.com>
Subject: Your Progressive bill is now available



Your installment bill is now available

Your policy has been reinstated. The current amount due for your policy is now available. Your payment is due on 06/21/2024.

[Pay or view bill](#)

Can't pay online?

You can call [1-800-999-8781](tel:1-800-999-8781) to pay or verify the amount due.



Your Policy
TERESA FRECHOU
[Florida Auto 975119070](#)

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Please do not reply to this email—this mailbox is not monitored.

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Policy underwritten by Progressive Select Insurance Company

Progressive Direct Insurance Company
[6300 Wilson Mills Rd, Mayfield Village, OH 44143](#)

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