

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA**

Robert Hossfeld, <i>individually and on</i>)	
<i>On behalf of all others similarly situated,</i>)	
)	
Plaintiff,)	
)	
v.)	Case No. 2:16-CV-02017-VEH
)	
Compass Bank and MSR Group, LLC)	
)	
Defendants.)	

**DEFENDANT COMPASS BANK’S ANSWER TO PLAINTIFF’S FIRST
AMENDED COMPLAINT**

Compass Bank (“Compass”)¹ answers Plaintiff Robert Hossfeld’s First Amended Complaint (utilizing the headings of Plaintiff’s complaint for the sake of clarity, though not adopting them) as follows:

1. Compass acknowledges that Hossfeld purports to bring claims pursuant to the Telephone Consumer Protection Act (“TCPA”) but denies all allegations contained in paragraph 1.

JURISDICTION AND VENUE

¹ The Court has ordered the substitution of Compass Bank for BBVA Compass Bancshares, Inc. *See* (Doc. 49). Plaintiff filed both the Complaint (Doc. 1) and Amended Complaint (Doc. 12) prior to the Court’s substitution order. As such, those pleadings refer to BBVA Compass Bancshares, Inc., not Compass Bank. Compass Bank answers Plaintiff’s Amended Complaint specifically under the assumption that the Court’s substitution order operates to change all references to BBVA Compass Bancshares, Inc. to Compass Bank. Compass Bank reserves the right to amend its answer, in the event it is determined that its assumption of the effect of the Court’s substitution order is false.

2. Compass admits that this Court has jurisdiction over Hossfeld's claims but denies all other allegations contained in paragraph 2.

3. Compass admits that this Court has jurisdiction over it but denies all other allegations contained in paragraph 3.

4. Paragraph 4 contains no allegations against Compass, requiring no response. To the extent paragraph 4 contains allegations against Compass, those allegations are denied.

5. Compass admits that venue is proper in this Court but denies all other allegations contained in paragraph 5.

PARTIES

6. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 and, on this basis, denies the same.

7. Compass admits that it is an Alabama banking corporation with offices located at 15 South 20th Street Birmingham, Alabama 35233.²

8. Admitted upon information and belief.

9. Compass admits it has a contractual relationship with MSR Group, LLC but denies all remaining allegations of paragraph 9.

THE TCPA

10. Paragraph 10 contains no allegations against Compass, requiring no

² Again, Compass responds as if all references to BBVA Compass Bancshares, Inc. have been substituted with Compass.

response. To the extent paragraph 10 contains allegations against Compass, those allegations are denied.

11. The TCPA speaks for itself; Compass denies any material allegations against it in paragraph 11.

12. The TCPA speaks for itself; Compass denies any material allegations against it in paragraph 12.

13. The TCPA speaks for itself; Compass denies any material allegations against it in paragraph 13.

14. *Bagg v. Ushealth Group, Inc.*, Case No. 6:15-cv-1666-Orl-37GJK, 2016 WL 1588666 (M.D. Fla. Apr. 20, 2016) speaks for itself; Compass denies any material allegations against it in paragraph 14.

15. Denied.

16. The rulings of the Federal Communications Commission speak for themselves; Compass denies any material allegations against it in paragraph 16.

FACTUAL ALLEGATIONS

17. Denied.

18. Compass admits that its contractual relationship with MSR relates to placing customer satisfaction surveys that have no marketing purpose but denies all remaining allegations of paragraph 18.

19. Compass lacks knowledge or information sufficient to form a belief

about the truth of the allegations in paragraph 19 and, on this basis, denies the same.

20. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 and, on this basis, denies the same.

21. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 and, on this basis, denies the same.

22. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 and, on this basis, denies the same.

23. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 and, on this basis, denies the same.

24. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 and, on this basis, denies the same.

25. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 and, on this basis, denies the same.

26. Denied as stated.

27. Paragraph 27 contains no allegations against Compass, requiring no response. To the extent that paragraph 27 contains allegations against Compass, those allegations are denied.

28. Denied.

29. Denied.

30. Compass admits that Hossfeld sent it a threatening electronic message containing false information; Compass denies all remaining allegations of paragraph 30.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied as stated.

36. Compass admits it has a contractual relationship with MSR but denies all remaining allegations of paragraph 36.

37. Compass lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 37 and, on this basis, denies the same.

38. Compass lacks knowledge or information sufficient to form a belief

about the truth of the allegations in paragraph 38 and, on this basis, denies the same.

39. Denied.

40. Denied.

CLASS ALLEGATION

41. Compass acknowledges that Hossfeld purports to bring an action under Rule 23 of the Federal Rules of Civil Procedure but denies all allegations in paragraph 41. Compass denies that any class should or can be certified in this action and denies that the classes which have been pled can or should be certified.

42. Paragraph 42 contains no allegations against Compass, requiring no response. To the extent that paragraph 42 contains allegations against Compass, those allegations are denied. Additionally, Compass denies that any class should or can be certified in this action and denies that the classes which have been pled can or should be certified.

43. Paragraph 43 contains no allegations against Compass, requiring no response. To the extent that paragraph 43 contains allegations against Compass, those allegations are denied. Additionally, Compass denies that any class should or can be certified in this action and denies that the classes which have been pled can or should be certified.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Paragraph 54 contains no allegations against Compass, requiring no response. To the extent that paragraph 54 contains allegations and Compass, those allegations are denied.

COUNT ONE

Violation of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. § 64.1200(a)

55. Compass incorporates all prior responses as if fully set forth herein.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

UNLESS EXPRESSLY ADMITTED IN ONE OF THE FOREGOING PARAGRAPHS, ALL MATERIAL ALLEGATIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT, INCLUDING ANY CONTAINED IN UNNUMBERED PARAGRAPHS, ARE DENIED.

COMPASS FURTHER DENIES THAT PLAINTIFF IS ENTITLED TO

**ANY OF THE RELIEF REQUESTED, OR ANY RELIEF WHATSOEVER,
FROM COMPASS, INCLUDING THE RELIEF SOUGHT IN THE
UNNUMBERED PARAGRAPHS FOLLOWING THE HEADING
“WHEREFORE”.**

DEFENSES

1. Plaintiff’s complaint, in whole or in part, fails to state a claim upon which relief may be granted.

2. Plaintiff lacks standing to maintain the instant cause of action for failure to suffer a concrete injury from any single phone call allegedly made in violation of the TCPA.

3. This action cannot proceed as a class action because Compass Bank established and implemented, with due care, reasonable practices and procedures to effectively prevent violations of the TCPA, 47 U.S.C. § 227, and its accompanying regulations, 47 C.F.R. § 64.1200.

4. This action cannot proceed as a class action because Plaintiff has alleged “fail safe” classes.

5. Plaintiff’s complaint, in whole or in part, fails to state a claim under the TCPA because Plaintiff granted prior express written consent to be called and/or because the owner of the telephone number at issue consented to any alleged calls received.

6. Plaintiff’s complaint, in whole or in part, fails to state a claim under the TCPA as to Compass because Compass did not initiate any calls.

7. To the extent Plaintiff's claims are subject to binding, mandatory arbitration, Compass does not waive and, in fact, expressly reserves the right to compel arbitration prior to substantially invoking the litigation process.

8. Any recovery is barred, or must be reduced, based on the principles of consent, acquiescence, and/or estoppel, fraud and/or suppression.

9. Any recovery is barred by the Plaintiff's own provision of false information to Compass Bank and Plaintiff's unclean hands and inequitable conduct.

10. Any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff or resulted from Plaintiff's own actions and own inattention, which equaled or exceeded any alleged wrongdoing by Compass.

11. Any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of others or resulted from the actions and/or omissions of third parties.

12. Any recovery is barred, or must be reduced, as a proximate result of Plaintiff's failure to mitigate any alleged damages.

13. Compass reserves the right to assert additional affirmative defenses to the extent warranted by discovery and the factual developments in this case.

Respectfully submitted this 17th day of November, 2017.

/s/ Gregory C. Cook

One of the Attorneys for Defendant,
Compass Bank

OF COUNSEL:

Gregory C. Cook

Jonathan P. Hoffmann

BALCH & BINGHAM, LLP

Post Office Box 306

Birmingham, Alabama 35201-0306

Tel: (205) 251-8100

Fax: (205) 488-5642

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of November, 2017, I electronically filed a copy of the foregoing via CM/ECF, which will provide service on the following:

Alexander H Burke
BURKE LAW OFFICES LLC
155 N Michigan Avenue
Chicago, IL 60601
Email: aburke@burkelawllc.com

Daniel J Marovitch
BURKE LAW OFFICES LLC
155 N. Michigan Ave, Suite 9020
Chicago, IL 60601
Email: dmarovitch@burkelawllc.com

Gregory S Graham
GREGORY S GRAHAM PC
803 Third Street SW
P O Drawer 307
Childersburg, AL 35044
Email: greg@grahamlegalservices.com

Scott D Owens
SCOTT D OWENS PA
3800 S Ocean Dr Ste 235
Hollywood, FL 33019
Email: scott@scottdowens.com

/s/ Gregory C. Cook

Of Counsel