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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PASQUAIL BATES, *et al.*,

Plaintiffs,

v.

DOLLAR LOAN CENTER, LLC, *et al.*,

Defendants.

Case No. 2:13-CV-1731-KJD-CWH

ORDER

Before the Court is Defendant Cash 1's ("Cash 1") Motion to Dismiss (#18). Plaintiff Sharon Pratt ("Pratt") opposed (#35) and Cash 1 replied (#41). The motion (#18) was joined by Defendants Check City Partnership, LLC; Clark County Collection Service, LLC; DLC Empire, LLC; Dollar Loan Center, LLC (#26). The motion (#18) was also joined by Tosh, Inc., (#27) and CCI Financial Inc., (#28). The reply (#41) was joined by Defendants Dollar Loan Center, LLC; DLC Empire, LLC; Clark County Collection Service, LLC; Check City Partnership, LLC; Tosh, Inc.,; and CCI Financial, Inc. (#50).

Also before the Court is Cash 1's Motion for Summary Judgment (#20), which Pratt opposed (#35), to which Cash replied (#41). The motion (#20) was joined by Defendants Check City Partnership, LLC; Clark County Collection Service, LLC; DLC Empire, LLC; Dollar Loan Center, LLC (#26). The motion (#20) was also joined by Tosh, Inc., (#27) and CCI Financial, Inc., (#28).

1 The reply (#42) was joined by Defendants Dollar Loan Center, LLC; DLC Empire, LLC; Clark
2 County Collection Service, LLC; Check City Partnership, LLC; Tosh, Inc.; and CCI Financial, Inc.
3 (#50).¹

4 I. Background

5 This is a class action complaint. Defendants are “all involved in the business of high-interest,
6 short-term loans (i.e. ‘payday loans’).” (#1; 2:24-25). Further, it is asserted that these businesses
7 collect “references” from borrowers under false pretenses, ultimately using these contacts primarily
8 in collection efforts. Id. at 14-15. Plaintiffs are those named as “references” and subsequently
9 contacted in the collection process. Plaintiffs assert that Defendants have violated the Telephone
10 Consumer Protection Act (“TCPA”). Id. at 2:19-23.

11 Plaintiff Sharon Pratt is the putative class representative, and the sole representative with
12 claims against Cash 1.

13 II. Legal Standard

14 Despite initially making both a motion to dismiss and a motion for summary judgment, Cash
15 1 concedes that this matter is before the Court on motion for summary judgment. (#41; 2-3).

16 Summary judgment may be granted if the pleadings, depositions, answers to interrogatories,
17 and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any
18 material fact and that the moving party is entitled to a judgment as a matter of law. See Fed. R. Civ.
19 P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). However, summary judgment
20 is appropriate only “after adequate time for discovery.” Celotex, 477 U.S. at 322. The moving party
21 bears the initial burden of showing the absence of a genuine issue of material fact. See Celotex, 477
22 U.S. at 323. The burden then shifts to the nonmoving party to set forth specific facts demonstrating a
23 genuine factual issue for trial. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574,
24 587 (1986); Fed. R. Civ. P. 56(e).

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26 ¹The Court notes that while docketed separately, motions #18 and #20 are identical. This holds true for replies
#41 and #42 also.

1 All justifiable inferences must be viewed in the light most favorable to the nonmoving party.
2 See Matsushita, 475 U.S. at 587. However, the nonmoving party may not rest upon the mere
3 allegations or denials of his or her pleadings, but he or she must produce specific facts, by affidavit
4 or other evidentiary materials provided by Rule 56(e), showing there is a genuine issue for trial. See
5 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). The court need only resolve factual
6 issues of controversy in favor of the non-moving party where the facts specifically averred by that
7 party contradict facts specifically averred by the movant. See Lujan v. Nat’l Wildlife Fed’n., 497
8 U.S. 871, 888 (1990); see also Anheuser-Busch, Inc. v. Natural Beverage Distribs., 69 F.3d 337, 345
9 (9th Cir. 1995) (stating that conclusory or speculative testimony is insufficient to raise a genuine
10 issue of fact to defeat summary judgment). “[U]ncorroborated and self-serving testimony,” without
11 more, will not create a “genuine issue” of material fact precluding summary judgment. Villiarimo v.
12 Aloha Island Air, Inc., 281 F.3d 1054, 1061 (9th Cir. 2002).

13 Summary judgment shall be entered “against a party who fails to make a showing sufficient
14 to establish the existence of an element essential to that party’s case, and on which that party will
15 bear the burden of proof at trial.” Celotex, 477 U.S. at 322. Summary judgment shall not be granted
16 if a reasonable jury could return a verdict for the nonmoving party. See Anderson, 477 U.S. at 248.
17 However, [i]f the evidence is merely colorable, or is not significantly probative, summary judgment
18 may be granted.” Id. (internal citations omitted).

19 III. Analysis

20 Plaintiffs’ claims against Cash 1 can be divided into two general categories: 1) violation of
21 the Telephone Consumer Protection Act (“TCPA”), 2) violation of the Deceptive Trade Practices Act
22 (“DTPA”).

23 A. Telephone Consumer Protection Act

24 The Telephone Consumer Protection Act (“TCPA”) in part restricts the use of automated
25 telephone equipment. 47 U.S.C. § 227. Relevant to this matter:

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1 It shall be unlawful for any person within the United States . . . to make any call (other
2 than a call made for emergency purposes or made with the prior express consent of
3 the called party) using any automatic telephone dialing system . . . to any telephone
number assigned to a . . . cellular telephone service . . . or any service for which the
called party is charged for the call;

4 Id. at § 227(b)(1).

5 Plaintiff argues that Cash 1 used an automatic telephone dialing system (“ATDS”) to contact
6 Plaintiff, either using the automatic function or by manually dialing Pratt. Cash 1 has filed an
7 affidavit asserting that it is Cash 1’s business practice and official policy to use an ATDS only to
8 contact borrowers and never to contact third parties. (#18, Ex. B). Cash 1 further avers that neither it
9 nor its agents contacted Pratt at the number provided on the loan application after the initial
10 verification of the number at loan origination. (#18, Ex. B). Cash 1 has also filed an affidavit
11 clarifying that while it uses an ATDS in its business, it uses an entirely different phone system to
12 manually dial references for application verification purposes. (#41, Ex. A). Cash 1 has also provided
13 a report reflecting no autodialed calls made to the number provided for Pratt, and verified this report
14 by affidavit. (#18, Ex. B, Ex. C). However, while heavily implied, Cash 1 fails to provide any
15 admissible statement that the system used to manually dial Pratt’s number lacks the capacities which
16 define an ATDS. Accordingly, the Court cannot find that no genuine dispute exists regarding this
17 material fact.

18 B. The Deceptive Trade Practices Act

19 In relevant part, the Deceptive Trade Practices Act (“DTPA”) defines a deceptive trade
20 practice as knowingly making any false representation in a transaction. N.R.S. 598.0915(15). The
21 DTPA prohibits a person in the course of their business from knowingly failing to disclose a material
22 fact in connection with the sale or lease of goods or services. N.R.S. 598.0923(2). It also prohibits
23 that same person from violating a state or federal statute or regulation relating to the sale or lease of
24 goods or services. N.R.S. 598.0923(3).

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1 Plaintiff concedes that Cash 1 has not violated N.R.S. 598.0915(15) or N.R.S. 598.0923(2).
2 Plaintiff maintains, however, that Cash 1 violated N.R.S. 598.0923(3) to the extent it violated the
3 TCPA which was analyzed above. Accordingly, summary judgment on this ground is similarly
4 premature.

5 Further, as summary judgment has been denied, the Court need not and will not address
6 Pratt's argument under Rule 56(d) for additional discovery.

7 IV. Conclusion

8 Defendant Cash 1 has not met its burden of demonstrating that no genuine issue of material
9 fact exists in this case. Accordingly, Cash 1's Motion for Summary Judgment (#20) is **HEREBY**
10 **DENIED** without prejudice. However, as Pratt has conceded that Cash 1 did not violate N.R.S.
11 598.0915(15) or N.R.S. 598.0923(2), Cash 1's Motion to Dismiss (#18) is **HEREBY GRANTED** in
12 part only as to Cash 1 and **DENIED** in part, consistent with the above analysis.

13 Additionally, the Court admonishes the parties against serial joinder in motion practice. All
14 joining Defendants lacked critical evidence which Cash 1 had provided, making analysis of their
15 claims substantively different from Cash 1's. Such one-size-fits-all representation is inappropriate
16 and fails to provide the relevant points required under Local Rule 7-2.

17 DATED this 7th day of January 2014.

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Kent J. Dawson
United States District Judge