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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
MEDFORD DIVISION

JOHN M. LANA, a resident of
Eagle Point, Oregon,

Case No. 1:13-cv-114

Plaintiff,

**COMPLAINT FOR VIOLATIONS OF
THE OREGON UNLAWFUL DEBT
COLLECTION PRACTICES ACT**

v.

JURY TRIAL DEMANDED

**TOYOTA MOTOR CREDIT
CORPORATION**, a California corporation
doing business as **TOYOTA FINANCIAL
SERVICES**.

ORS 646.639 et seq.

Defendant.

1.

INTRODUCTION

Toyota harasses Mr. Lana with collection calls despite being asked to stop.

While not the crime of the century, Toyota's unfair tactics give it an advantage over other debt collectors who choose to follow Oregon's laws. Mr. Lana files this lawsuit to stop the calls and hopefully deter Toyota's abusive practices in the future.

COMPLAINT - Page 1

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2.

John M. Lana (“plaintiff”) alleges that at all times material:

3.

JURISDICTION AND THE PARTIES

This is a civil action brought under the Oregon Unlawful Debt Collection Practices Act (“OUDCPA”), ORS 646.639 *et seq.*

4.

This Court has jurisdiction pursuant to 28 U.S.C. § 1332 because the parties are from different states and the amount in controversy exceeds \$75,000.

5.

Venue is proper in this district because the majority of the acts and collections occurred here, plaintiff resides here, and defendant collects debt here.

6.

Plaintiff resided in Jackson County, Oregon during all times material and is a “person” and a “consumer” as defined by the OUDCPA at ORS 646.639(1)(h) and (a).

7.

Toyota Motor Credit Corporation (“defendant”) engages in consumer car loan transactions with Oregonians and is a “person” and a “commercial creditor” as defined by the OUDCPA at ORS 646.639(1)(h) and (c).

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8.

Defendant attempts to enforce its consumer loan obligations and is a “debt collector” as defined by the OUDCPA at ORS 646.639(1)(g).

9.

Defendant attempts to collect plaintiff’s alleged consumer car loan obligation constituting a “debt” as defined by the OUDCPA at ORS 646.639(1)(e).

10.

FACTUAL ALLEGATIONS

In 2011 plaintiff borrowed money from defendant to purchase a 2007 Toyota Sequoia for family use.

11.

He promised to make monthly payments to defendant.

12.

In late 2011 plaintiff broke his promise to defendant and stopped making payments.

13.

Due to unforeseen events, including the breakup of his marriage, he became unable to afford two car payments.

14.

He retained an attorney to work with his debt collectors and advise him regarding his credit and bankruptcy options.

///

15.

On or around December 2012 plaintiff called defendant.

16.

Plaintiff told defendant he could not afford to make his payments.

17.

Plaintiff told defendant he was filing bankruptcy.

18.

Plaintiff referred defendant to his attorney.

19.

Plaintiff gave defendant his attorney's contact information.

20.

Plaintiff told defendant not to contact him directly anymore.

21.

Plaintiff told defendant he was surrendering his car and provided the location of the car so defendant could repossess it.

22.

Despite plaintiff's requests that defendant deal directly with his attorney and stop calling, defendant continues to harass him with phone calls.

23.

Defendant's continued calls to plaintiff serve no legitimate purpose and constitute harassment.

24.

Defendant's continued calls to plaintiff are attempts to collect a consumer debt.

25.

Even if defendant has a legitimate purpose to continually contact plaintiff, it knows plaintiff referred the matter to his attorney.

26.

Defendant knows its continued calls are inconvenient for plaintiff and against his wishes.

27.

Defendant refuses to contact plaintiff's attorney and refuses to stop calling him.

28.

Defendant leaves plaintiff no choice but to file this lawsuit to stop the harassment.

29.

As a direct and proximate result of defendant's malicious and unlawful debt collection and harassment, plaintiff suffers severe ongoing annoyance, inconvenience, frustration and other negative emotions to be proven at trial.

30.

Defendant's malicious telephonic harassment is criminal in nature and defendant deserves punishment.

31.

Plaintiff is entitled to and so demands a trial by jury.

///

32.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

(OUDCPA)

(ORS 646.641)

33.

Plaintiff re-alleges the above by reference.

34.

Defendant injured plaintiff through its willful and malicious use of unlawful collection practices as detailed above, violating the OUDCPA, specifically ORS 646.639(2)(e).

35.

As a result of defendant's willful and malicious use of unlawful collection practices, plaintiff is entitled to the greater of actual damages or \$200, punitive damages, reasonable attorneys fees and costs, injunctive relief and declaratory relief pursuant to ORS 646.641.

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WHEREFORE, plaintiff seeks judgment against defendant as follows:

- a. Injunctive relief enjoining defendant from further calling him directly to collect debt;
- b. Declaratory relief holding defendant in violation of Oregon's debt collection laws;
- c. An award of actual damages, statutory damages, punitive damages, and reimbursement of plaintiff's reasonable attorneys fees and costs; and
- d. For other such relief as this Honorable Court deems just and proper.

DATED: January 18, 2013

s/ Michael Fuller

Michael Fuller, Oregon Bar No. 09357
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JS 44 (Rev. 09/11)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS JOHN M. LANA</p> <p>(b) County of Residence of First Listed Plaintiff <u>JACKSON, OR</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> MICHAEL FULLER, OLSENDAINES, PC, 9415 SE STARK ST., STE 207, PORTLAND, OR 97216</p>	<p>DEFENDANTS TOYOTA MOTOR CREDIT CORPORATION</p> <p>County of Residence of First Listed Defendant <u>CALIFORNIA</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input checked="" type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:33%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district *(specify)*
 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
ORS 646.639 et seq.

Brief description of cause:
UNFAIR DEBT COLLECTION

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE: 01/17/2013 SIGNATURE OF ATTORNEY OF RECORD: s/ Michael Fuller

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

JOHN M. LANA

Plaintiff

v.

TOYOTA MOTOR CREDIT CORPORATION

Defendant

Civil Action No. 1:13-cv-114

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) TOYOTA MOTOR CREDIT CORPORATION
C/O R.A. C T CORPORATION SYSTEM
388 STATE ST STE 420
SALEM, OR 97301

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

JOHN M. LANA
C/O ATTORNEY MICHAEL FULLER
OLSENDAINES, PC
9415 SE STARK ST., STE 207
PORTLAND, OR 97216

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk