

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS**

**MICHAEL W. KINCAID, DDS, INC.
DBA RIVERSIDE FAMILY DENTAL GROUP**
individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

SYNCHRONY FINANCIAL

Defendant.

CIVIL ACTION NO. 1:16-cv-00796

**CLASS ACTION COMPLAINT
JURY DEMANDED**

CLASS ACTION COMPLAINT

1. In 1991, Congress enacted the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “unrestricted telemarketing . . . can be an intrusive invasion of privacy.” 47 U.S.C. § 227, Congressional Statement of Findings #5. In enacting the TCPA, Congress outlawed telemarketing via unsolicited facsimile, hereinafter “Junk Faxes.” 47 U.S.C. § 227. Plaintiff, Michael W. Kincaid, DDS, Inc. d/b/a Riverside Family Dental Group is a private dental practice that has been inundated with Junk Faxes. Plaintiff brings this class action to challenge Defendant Synchrony Financial’s wholesale issuance of Junk Faxes in violation of the TCPA through its dental care credit card offerings, “CareCredit.”

THE PARTIES

2. The Plaintiff Michael W. Kincaid, DDS, Inc. d/b/a Riverside Family Dental Group (“Plaintiff” or “Riverside Family Dental Group”) is a private dental practice with multiple locations.

3. The Defendant Synchrony Financial (“Synchrony” or “Defendant”) is a publicly traded corporation that does extensive business in the State of Illinois. Synchrony has numerous employees and customers within this district.

JURISDICTION

4. The Court has federal question subject matter jurisdiction over these TCPA claims. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740 (2012).

5. The Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because: (a) at least one member of the putative class is a citizen of a state different from Defendant, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and (c) none of the exceptions under that subsection apply to this action.

6. This Court has personal jurisdiction in this matter because Synchrony does business throughout the United States, including doing extensive business within the State of Illinois and maintaining ongoing physical presence in the state with numerous employees and customers in this district. Defendant therefore has established minimum contacts showing it has purposefully availed itself to the resources and protection of the state of Illinois.

7. Venue is proper in the United States District Court for the District of Illinois as Defendant is subject to personal jurisdiction in this district, and Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced, and because Defendant’s contacts with this district are sufficient to subject it to

personal jurisdiction. *See* 28 U.S.C. § 1391. In addition, Synchrony has sent an extensive number of Junk Faxes to individuals and businesses residing in this district that are the subject of this action.

THE LEGAL BASIS OF THE CLASS CLAIMS

8. Riverside Family Dental Group's claims, and those of the class it seeks to represent, arise under the TCPA.

9. Among other provisions, the TCPA forbids Junk Faxes—sending unsolicited advertisements for goods and services via facsimile. 47 U.S.C. § 227(b)(1)(C).

10. The TCPA requires that even fax advertisements being sent to those who consented to their receipt, or with whom the advertiser had an established business relationship, must include an Opt Out Notice. 47 U.S.C. § 227(b)(2)(D).

11. Among other things, the Opt Out Notice provision requires the sender to clearly disclose in the body of the fax that recipients may request that the sender stop sending them fax advertisements—and that failure to remove the recipient from the sender's database within thirty days of such a request is itself a violation of the TCPA.

12. Section § 227(b)(3) of the TCPA provides a private right of action:

A person or entity may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State, (A) an action based on a violation of this subsection or the regulations prescribed under this subsection to enjoin such violation, (B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater, or (C) both such actions.

FACTUAL ALLEGATIONS AS TO THE REPRESENTATIVE PLAINTIFF

13. Synchrony offers a series of financial products to consumers, including through the brand name "CareCredit."

14. The only product offered by CareCredit is a credit card designed to be used by medical patients that charges an annual interest rate of 26.99%.

15. In early May 2015, an individual from CareCredit visited the office of the Plaintiff.

16. This individual had previously visited the practice and showed up every two months or so to encourage the staff to get patients to submit CareCredit applications.

17. During the May 2015 visit, the CareCredit representative was very rude and aggressive to the staff.

18. The CareCredit representative told the staff that they currently had zero patients using CareCredit at that point in time, and he pulled out a report showing that the dental practice had not had any patients submit applications for CareCredit.

19. The representative then sternly told the administrative staff for the Plaintiff that they needed to do a better job getting patients to sign up for CareCredit.

20. The Clinical Care Coordinator for the Plaintiff told the CareCredit representative that they were not going to push their credit card product on their patients who had no need for it.

21. The CareCredit representative responded by telling the Clinical Care Coordinator for the Plaintiff that the dental office would be able to sell \$20,000 treatment plans if they used the CareCredit product.

22. The Clinical Care Coordinator for the Plaintiff responded by informing the CareCredit representative that the practice simply did not push those kinds of high dollar treatment plans.

23. Despite this unequivocal response, the CareCredit representative remained on the premises.

24. The CareCredit representative then continued in his aggressive sales pitch, telling the Plaintiff's staff they needed to go online and do a certification training session to help sell the CareCredit product.

25. The Clinical Care Coordinator for the Plaintiff then told the CareCredit representative they had patients to wait on and that he was getting rude and asked him to leave the premises.

26. Instead of these solicitation visits, CareCredit changed its practice of constant contact of the Plaintiff.

27. Next, the Plaintiff begin receiving calls from CareCredit telemarketing representatives 3 times a day, each and every day, pushing the practice to complete the CareCredit credit card product.

28. In response to these calls, the Plaintiff informed CareCredit that they were not interested in its product.

29. After CareCredit's unwelcome solicitation calls failed to yield the results that CareCredit sought, CareCredit again changed its tactic.

30. On June 23, July 15, 21, 27, August 6, & 13, 2015, Defendant sent fax advertisements to Riverside Family Dental Group touting CareCredit.

31. A copy of the advertisements are attached as Exhibit A.

32. The Defendant itself sent the fax advertisements.

33. The fax advertisements indicate that they would like the Plaintiff to complete the CareCredit certification so that they can resume offering the CareCredit services.

34. CareCredit's contact information is provided on the facsimile advertisement, including the telephone number at (800) 859-9975.

35. The fax advertisements also tell the recipient to visit the Defendant's website at www.carecredit.com/pro.

36. Riverside Family Dental Group did not consent to receive fax advertisements from Defendant.

37. The fax advertisement did not contain an Opt Out Notice that complies with the TCPA.

CLASS ALLEGATIONS

38. Riverside Family Dental Group brings this action under Fed. R. Civ. P. 23.

39. Through the transmission of generic fax advertisements promoting its goods and services, including the Junk Fax it sent to Riverside Family Dental Group, Defendant has engaged in wholesale violations of the TCPA.

40. Defendant did not obtain the consent of Junk Fax recipients prior to sending them.

41. To the extent facsimile advertisements were transmitted by Defendant to those who had given consent, or had an established business relationship with it, the Junk Faxes still violate the TCPA, as they did not contain the Opt Out Notice required by law.

42. The class that Riverside Family Dental Group seeks to represent is composed of all persons or entities within the United States to whom Defendant sent Junk Faxes promoting CareCredit's goods or services at any time within four years prior to the filing of this Complaint through the date of certification in this action.

43. The class defined above is identifiable by Defendant and its business partners or agents from the databases used to send the Junk Faxes.

44. There are questions of law and fact common to Riverside Family Dental Group and to the proposed class, including but not limited to the following:

- a. Whether Defendant violated the TCPA by engaging in fax advertising;
- b. Whether the facsimiles sent by Defendant to class members constitute unsolicited advertisements; and
- c. Whether Riverside Family Dental Group and the members of the class are entitled to statutory damages as a result of Defendant's actions.

45. Riverside Family Dental Group's claims are typical of the claims of the class.

46. Riverside Family Dental Group is an adequate representative of the class because its interests do not conflict with those of the class, it will fairly and adequately protect the interests of the class, and it is represented by counsel skilled and experienced in class actions.

47. Common questions of law and fact predominate over questions affecting only individual class members, and a class action is the superior method for the fair and efficient adjudication of the controversy. The only individual question concerns identification of class members, which will be ascertainable from records maintained by Defendant and/or its agents.

48. The likelihood that individual members of the class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

49. Riverside Family Dental Group is capable of representing the members of the class.

**CAUSES OF ACTION
COUNT I: VIOLATION OF THE TCPA**

50. Defendant caused Junk Faxes promoting its goods and services to be sent to Riverside Family Dental Group and class members, in violation of the TCPA.

51. By sending Junk Faxes to the class, Defendant violated class members' privacy rights.

52. By sending Junk Faxes to the class, Defendant caused class members to sustain property damage and cost in the form of paper and toner.

53. By sending Junk Faxes to the class, Defendant interfered with the class members' use of their property, as class members' facsimile machines were encumbered by the transmission of Defendant's Junk Faxes.

54. Defendant failed to provide the requisite Opt Out Notice on its Junk Faxes, informing the recipients of their right to cease receiving such advertisements and a cost-free mechanism to make such request.

55. Failure to provide an Opt Out Notice on a facsimile advertisement is a separate and distinct violation of the TCPA.

56. The TCPA provides for statutory damages in the amount of a minimum of \$500 for each separate violation of its terms.

COUNT II: INJUNCTIVE RELIEF

57. The TCPA expressly authorizes injunctive relief to prevent future violations of the Act.

58. Riverside Family Dental Group, on behalf of the class, respectfully petitions the Court to order Defendant to immediately cease engaging in unsolicited facsimile advertising in violation of the TCPA.

PRAYER FOR RELIEF

WHEREFORE, on behalf of itself and members of the class, Riverside Family Dental Group prays for the following relief:

1. That Defendant be enjoined from engaging in future telemarketing in violation of the TCPA;

2. That Defendant, its agents, or anyone acting on its behalf be enjoined from altering, deleting, or destroying any documents or records that could be used to identify the class members;

3. That this Court certify the claims of Riverside Family Dental Group and all others similarly situated as class action claims as provided by Rule 23 of the Federal Rules of Civil Procedure;

4. That Riverside Family Dental Group and the other members of the class action so certified be awarded \$500 for each negligent violation of the TCPA by Defendant and \$1,500 for each willful violation;

5. That the Court enter an appropriate order enjoining Defendant, its agents, or anyone acting on its behalf from altering, erasing, changing, deleting, destroying, or otherwise disposing of any records, including computer disks or computer programs, in its possession or control which can be used to identify all persons, corporations, or other entities to whom Defendant have transmitted unsolicited facsimile advertisements; and

6. That Riverside Family Dental Group and the members of the class be granted such other and further relief as is just and equitable under the circumstances.

JURY DEMAND

Riverside Family Dental Group requests a jury trial as to all claims of the complaint so triable.

PLAINTIFF

**MICHAEL W. KINCAID, DDS, INC.
DBA RIVERSIDE FAMILY DENTAL
GROUP**

By its attorneys:

/s/ Brian K. Murphy

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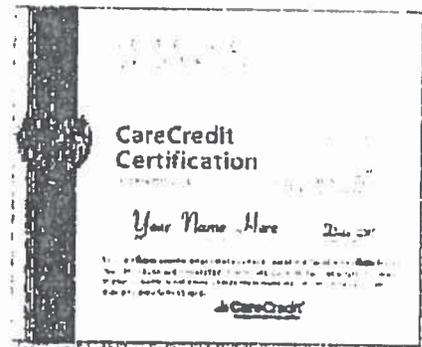
EXHIBIT A



MID 7874
Riverside Family Dental Group

CareCredit Certification Deadline: July 1, 2015*

We're sure you'll agree your *patients/clients rely on you* to provide them with the most accurate information so they can make care and financial decisions that are best for them. ***That's why it's important at least one person on your team complete CareCredit Certification as soon as possible.*** If not, you may be providing inaccurate



information to your patients/clients. Plus, your ability to process applications may be impacted as early as July.* This means if a patient/client would like to apply for a CareCredit credit card at your practice, you will be unable to submit an application on their behalf until CareCredit Certification has been completed.

The deadline for required CareCredit Certification is approaching. Please don't wait until you lose your ability to help patients/clients who prefer to pay with CareCredit. Get started on your CareCredit Certification today.

Don't delay. Complete the ***easy, 25-minute online training immediately!***

Reminder: if you have multiple locations, at least ***one team member at each location*** is required to complete CareCredit Certification every two years.

To complete your Certification:

- ▶ Log onto www.carecredit.com/pro and click *CareCredit Training*, then *Learning Center* and then *CareCredit Certification*.

Questions?

Contact your Practice Development Team at 800-859-9975.

* Your practice's ability to process CareCredit applications may be suspended as early as July 1, 2015 if CareCredit Certification training has not been completed.



**ACTION
REQUIRED:**
Complete your
CareCredit
Certification

MID 7874

Riverside Family Dental Group

Will You Help Us?

We are reaching out to you in hopes you can help. We've been encouraging all 186,000 practices that accept CareCredit to complete a short online training session so they are prepared with the most up-to-date information should a patient/client walk in with a CareCredit credit card and request to use it at the practice.

This happens quite frequently because CareCredit is used, on average, 38,000 times a day! And another 189,000 new cardholders, on average, are approved every month.

According to our records, you are one of the few remaining practices yet to complete this simple training.

How can we help you complete required training?

- ▶ If you need help with training, call 800-859-9975 to reach a member of our Provider Services Team who is standing by to assist you.
- ▶ If you're planning to complete training, first be sure you are registered for CareCredit's provider website by going to www.carecredit.com/pro. Once you have registered or confirmed you are already registered, to complete training click *CareCredit Training*, then *Learning Center*, and then *CareCredit Certification*.

Unfortunately, because it's important to provide patients/clients with up-to-date information, CareCredit will have no option but to suspend practices* that have not completed training.

Thank you for your help and attention to this simple training request.

Please disregard this communication if you have already completed CareCredit Certification.

*Your practice's ability to process CareCredit applications will be suspended if CareCredit's required Certification training has not been completed.



MID: 7874

Practice Name: Riverside Family Dental Group

Dear Valued Provider

As we mentioned last month, CareCredit is continuing our migration to a **new, state-of-the-art data center**. During this time, some features of our www.carecredit.com website may be unavailable. There may be minimal impact to application processing during migration. We hope to cause as little disruption to your teams as possible, but we wanted to make you aware in the unexpected event that we run into any issues during transition.

However, practices will be able to process CareCredit transactions as normal. For any immediate needs during migration, please call Provider Services at **(800) 859-9975**.

Affected Time Period

Sunday, July 26th - 12:01 a.m. - 2:00 p.m. EDT

We appreciate your understanding and patience. The long-term benefit is that we will have a **new, state-of-the-art data processing infrastructure** to continue serving your needs and protecting practice and patient/client data.

We appreciate your partnership and support!

Sincerely,

Your CareCredit Team



MID 7874

Riverside Family Dental Group

**Your Certification deadline has passed.
Please disregard this communication if your
team has completed required CareCredit
Certification for your practice(s).**

July 23, 2015

Dear Doctor:

We know you and your team are very busy helping patients get healthy.

But, I'd like to ask for your assistance. Your patients/clients rely on your team to provide them with the most accurate information, especially when it comes to financing their care. Therefore, every two years at least one member of your team is required to complete CareCredit Certification to keep your practice up-to-date.

According to our records the deadline* for Certification has passed, and you are unfortunately one of the few remaining practices yet to complete training **This means your ability to submit CareCredit applications will be suspended** unless at least one member of your team can complete the short, online training as soon as possible.

Providing patients/clients with accurate information is our common goal and a requirement when offering the CareCredit program.

Thank you for your support. If you have any questions or would like further assistance, please call 800-859-9975.

Sincerely,

Dave Fasoli
CEO and President, CareCredit

P.S. Please ensure a member of your practice completes mandatory Certification today. Have a member of your team log onto www.carecredit.com/pro. make sure your practice is registered for the site, then click *Training*, then *Learning Center* and then *Start Certification*.

*Your practice's ability to submit CareCredit applications will be suspended if CareCredit Certification training has not been completed.



**ACTION
REQUIRED:
Complete your
CareCredit
Certification**

MID 7874

Riverside Family Dental Group

Your deadline to complete CareCredit Certification has Passed - Application Suspension will Follow*

Our records indicate, out of **more than 185,000** practices nationwide, you're among the few who have not completed the simple, 25-minute, online training required for CareCredit Certification. This Certification is critical to your and your team's ability to provide patients/clients with the most accurate information on CareCredit.

CareCredit will soon begin issuing suspension notifications to the doctor/owners of practices that remain uncertified. This impending suspension will affect your ability to submit CareCredit applications. Therefore, if a patient/client wants to apply for the CareCredit health, wellness, and beauty credit card at your practice, so they can get the care they/their pets need and want, you will be unable to help them until you have completed Certification and have been reinstated.

If you are able to complete required CareCredit Certification within 24 hours of this fax's sent date and time, please disregard the upcoming suspension communication.

To complete your Certification:

► Log onto **www.carecredit.com/pro** and click *CareCredit Training*, then *Learning Center* and then *Start Certification*.

Questions?

Contact your Provider Services Team at 800-859-9975.

Please disregard this communication if you have already completed CareCredit Certification.

* Your practice's ability to submit CareCredit applications will be suspended if CareCredit Certification training has not been completed.



MID 1010

Robert D. Burnard DDS

Your deadline to complete CareCredit Certification has Passed - Application Suspension will Follow*

Our records indicate, out of **more than 185,000** practices nationwide, you're among the few who have not completed the simple, 25-minute, online training required for CareCredit Certification. This Certification is critical to your and your team's ability to provide patients/clients with the most accurate information on CareCredit.

CareCredit will soon begin issuing suspension notifications to the doctor/owners of practices that remain uncertified. This impending suspension will affect your ability to submit CareCredit applications! Therefore, if a patient/client wants to apply for the CareCredit health, wellness, and beauty credit card at your practice, so they can get the care they/their pets need and want, you will be unable to help them until you have completed Certification and have been reinstated.

If you are able to complete required CareCredit Certification within 24 hours of this fax's sent date and time, please disregard the upcoming suspension communication.

To complete your Certification:

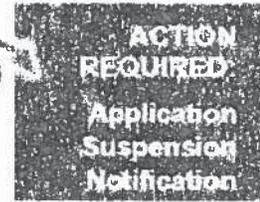
- ▶ Log onto **www.carecredit.com/pro** and click *CareCredit Training*, then *Learning Center* and then *Start Certification*.

Questions?

Contact your Provider Services Team at 800-859-9975.

Please disregard this communication if you have already completed CareCredit Certification.

* Your practice's ability to submit CareCredit applications will be suspended if CareCredit Certification training has not been completed.



MID 1010

Robert D. Burnard DDS

Official Application Suspension Notification: Your Deadline to Complete Required CareCredit Certification Has Passed.

According to our records, your practice has yet to complete the simple, online training required to receive CareCredit Certification. As we have communicated over the past several months, it is crucial to provide patients/clients with the most accurate and up-to-date information when they choose to apply for CareCredit. Therefore, your practice is now suspended from submitting any new patient/client applications. What does this mean?

1. **You can continue to accept the CareCredit** credit card from existing cardholders.
2. **You cannot submit CareCredit applications** on behalf of your patients/clients.
3. **You will not be recognized on CareCredit's online Provider Locator** as a Certified Practice.
4. **Patients/Clients can continue to apply** directly with CareCredit (the following should be considered temporary solutions until your practice completes CareCredit Certification):
 - Online or via their mobile device at www.carecredit.com
 - Calling 800-677-0718 to speak with one of CareCredit's live customer care representatives

In 2014 alone, more than 2.6 million new cardholders were approved for CareCredit. These are patients/clients who may not have been able to get needed or wanted care for themselves or their pets if they had not had the opportunity to apply for CareCredit with the help of their provider.

To continue helping patients/clients who desire a financing solution or prefer to use special financing to pay for treatment, **take a few minutes to complete the reinstatement process outlined below:**

1. Complete online training by visiting www.carecredit.com/pro, then click *CareCredit Training*, then *Learning Center* and then *Start Certification*.
2. Within 48 hours, your practice will be reinstated and can begin to submit CareCredit applications.

If you need further assistance to complete training please call Provider Services at 800-859-9975.