UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

WES NEWMAN, individually and on behalf of all others similarly situated, Plaintiff v. INTEGRITY MARKETING GROUP, LLC, Defendant.	Case No. 1:24-cv-03188 Honorable Thomas M. Durkin

MEMORANDUM IN SUPPORT OF DEFENDANT INTEGRITY MARKETING GROUP LLC'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT

INTRODUCTION

Defendant Integrity Marketing Group, LLC ("IMG") moves to dismiss Plaintiff Wes Newman's Class Action Complaint, [ECF 1], for alleged violations of the Telephone Consumer Protection Act ("TCPA") because he specifically admits that IMG did not place any of the phone calls of which he complains—and thus is not a proper party for this TCPA action.

Rather, Plaintiff alleges that specific IMG affiliates called Plaintiff to sell him insurance products. Plaintiff nonetheless chose not to sue any of those subsidiaries, and instead seeks to hold IMG liable for their conduct. Yet Plaintiff makes no attempt to plausibly allege a veil piercing theory to hold IMG liable for the alleged conduct of its subsidiaries. Plaintiff's vague allegations that these calls were made on behalf of IMG or that IMG ultimately benefited from these calls—

in the same way any corporate parent "benefits" from the acts of its subsidiaries—does not suffice under corporate law or the TCPA to hold a parent/holding company liable for the acts of its entirely separate subsidiaries. Accordingly, Plaintiff's claims should be dismissed because Plaintiff lacks standing to sue IMG under 12(b)(1) and has failed to state a claim against IMG under 12(b)(6).

STATEMENT OF FACTS

The claims in the Complaint suffer from numerous defects. But the Complaint's primary failure—and the subject of IMG's motion to dismiss—is Plaintiff's failure to name the proper defendant from whom relief could be obtained for the specific TCPA violations he alleges.

Plaintiff alleges claims against IMG under the TCPA based on allegations that he received two calls from Connexion Point, two calls from Berwick Insurance Group, one call from Your Insurance Group, and 34 calls from Family First Life.[1] *See* Compl. ¶ 7. Plaintiff does not allege that he received *any* calls from IMG. Plaintiff never even alleges that IMG was mentioned during any of the calls described in the Complaint. And Plaintiff never alleges any specific conduct by IMG that would plausibly state a colorable TCPA claim against IMG. Plaintiff does not even allege any product sold by IMG, or that such a product was ever mentioned during any of the calls described in the Complaint.

As to IMG, Plaintiff merely alleges that Connexion Point, LLC, Berwick Insurance Group LLC, Your Insurance Group LLC, and Family First Life LLC are "subsidiaries" of IMG. Compl. ¶¶ 74, 84, 104, 110. There are no other allegations regarding the corporate structure, solvency, or any control by IMG of these entities. Indeed, Plaintiff primarily complains that IMG purportedly did not exert sufficient "control" or "influence" over these entirely separate

[1] Plaintiff further identifies calls from Luther James Insurance Group and FFL Sparta, claiming they too are a part of Family First Life LLC. Compl. ¶¶ 189, 204.

businesses, underscoring their independent and uncoordinated operations. *See, e.g.,* Compl. ¶¶ 229; 231; 232.

Although Plaintiff initially recognizes that these entities are subsidiaries and separate corporate entities, Plaintiff then characterizes them (without any well-pled facts) as "agents" or "(sub)vendors" and relies on this legal conclusion as the basis of liability against IMG. Compl. ¶¶ 252; 257. Plaintiff alleges no factual basis for this characterization or sudden conversion of these entities from subsidiaries to "agents" or "(sub)vendors." Instead, Plaintiff makes the general and conclusory allegation that IMG "develops and distributes life and health insurance and other products, which it telemarkets to consumers through a network of subsidiaries, insurance agents, and (sub)vendors." Compl. ¶ 26. Not only is this allegation conclusory and unsupported by any specific allegations of fact regarding IMG's conduct, it is untrue. IMG does not engage in or direct insurance sales because it is not a licensed insurance agency and does not sell insurance products. Pulkowski Decl. ¶¶ 3-5.

Indeed, Plaintiff recognizes that this "on behalf of" allegation is unsupported by any factual allegations. In *every one* of his subsequent specific allegations regarding calls or texts by subsidiaries, Plaintiff links IMG to those calls or texts only "on information and belief," alleging that "[o]n information and belief," the calls and texts at issue were made "for the purpose of encouraging the purchase of goods, products, or services through Integrity." Compl. ¶¶ 107, 111, 118, 122, 128, 132, 138, 144, 150, 155, 158, 166, 171, 175, 180, 185, 198, 225.

These allegations are not sufficient to establish standing by Plaintiff to bring claims against IMG as explained below.

ARGUMENT

I. Standard of Review

Rule 12(b)(1) of the Federal Rules of Civil Procedure provides a procedural mechanism for a defendant to challenge the plaintiff's standing to sue. *See, e.g., American Fed'n of Govt. Employees v. Cohen*, 171 F.3d 460, 465 (7th Cir. 1999). A Rule 12(b)(1) motion may be asserted as a facial or factual challenge to subject matter jurisdiction. *See Villasenor v. Industrial Wire & Cable, Inc.*, 929 F. Supp. 310, 312 (N.D. Ill. 1996).

A facial attack under Rule 12(b)(1) is a challenge to the face of the pleading itself. Such a challenge is evaluated under the same standard used to evaluate a challenge under Rule 12(b)(6). *Silha v. ACT, Inc.*, 807 F.3d 169, 174 (7th Cir. 2015). The court accepts as true all well-pleaded facts in the plaintiff's complaint and draws all reasonable inferences from those facts in the plaintiff's favor. *Kubiak v. City of Chicago*, 810 F.3d 476, 480–81 (7th Cir. 2016). But the court need not take statements of law and conclusory factual allegations as true. *Bilek v. Fed. Ins. Co.*, 8 F.4th 581, 586 (7th Cir. 2021). Under this standard, the complaint must assert non-conclusory facts that, if taken as true, allow the court to draw the reasonable inference that the defendant is liable for the conduct alleged. *Adams v. City of Indianapolis*, 742 F.3d 720, 728–29 (7th Cir. 2014).

A factual attack, on the other hand, challenges the factual existence of subject matter jurisdiction. And unlike a facial challenge, when evaluating a factual challenge, the court does not simply assume the truth of the complaint's allegations. Rather, the plaintiff "bears the burden of proving jurisdiction." *J. McIntyre Mach., Ltd. v. Nicastro*, 564 U.S. 873, 889–90 (2011); *see also Apex Digital, Inc. v. Sears, Roebuck & Co.*, 572 F.3d 440, 444 (7th Cir. 2009). In its analysis, "the district court may properly look beyond the jurisdictional allegations of the complaint and view whatever evidence has been submitted on the issue to determine whether in fact . . . jurisdiction exists." *Apex Digital*, 572 F.3d at 444. This does not convert a motion to dismiss into one for

summary judgment. *Id.* at 443. When a defendant has "produced evidence calling [jurisdiction] into question . . . the presumption of correctness that [the Court] accord[s] to a complaint's allegations falls away," and the plaintiff must attach its own evidence in support of jurisdiction. *Id.* at 444–45.

II. Plaintiff's Claims Must Be Dismissed Because Plaintiff Sued a Party that Did Not Cause and Is Not Capable of Redressing the Alleged Injuries.

Plaintiff lacks standing to sue IMG, and, therefore, his claims against IMG should be dismissed under Federal Rule of Civil Procedure 12(b)(1). For a plaintiff to have standing to sue a specific defendant in federal court, it "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Standing is both claim- and relief-specific, such that a plaintiff must establish Article III standing for each of its claims and for each form of relief sought. *See DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). Plaintiff cannot meet the second and third elements and therefore has no standing to bring these claims against IMG.

As to the second element, "the [alleged] injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotations omitted and emphasis added); *see also Simon v. E. Kentucky Welfare Rights Org.*, 426 U.S. 26, 41 (1976). Thus, the Seventh Circuit has repeatedly held that when a plaintiff sues someone other than the entity that actually caused the alleged injury, the lawsuit must be dismissed for lack of standing. *See Johnson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 719 F.3d 601, 607 (7th Cir. 2013); *MainStreet Org. of Realtors v. Calumet City, Ill.*, 505 F.3d 742, 753 (7th Cir. 2007); *Kawczynski*

v. Am. Coll. of Cardiology, 670 F. App'x 398, 400 (7th Cir. 2016), *cert. denied*, 137 S. Ct. 1821 (2017). This is just such a case.

Despite a lengthy and scattershot Complaint, Plaintiff fails to allege *facts* linking his alleged injuries to any conduct by IMG. Plaintiff specifically alleges that the calls were made by entities he alleges are subsidiaries of IMG: Connexion Point, LLC, Berwick Insurance Group LLC, Your Insurance Group LLC, and Family First Life LLC. Compl. ¶¶ 74, 84, 104, 110. Plaintiff never alleges that IMG was ever mentioned during any of the calls described in the Complaint. And Plaintiff never alleges any specific product sold by IMG or that such a product was ever mentioned during any of the calls described in the Complaint.

Rather, Plaintiff appears to claim that because these entities are subsidiaries of IMG, IMG must somehow be legally responsible for their conduct in making the alleged calls. Yet longstanding principles of corporate law are fatal to this conclusion. "It is a general principle of corporate law deeply ingrained in our economic and legal systems that a parent corporation . . . is not liable for the acts of its subsidiaries." *United States v. Bestfoods,* 524 U.S. 51, 61 (1998) (cleaned up). Even at the pleading stage, a plaintiff that seeks to attribute acts of an entity to an owner or shareholder of that entity, must plead specific facts sufficient to pierce the corporate veil under the applicable law. *Marvellous Day Elec. (S.Z.) Co. v. Ace Hardware Corp.*, 900 F. Supp. 2d 835, 846 (N.D. Ill. 2012) ("Corporate form is not an affirmative defense; if it were, there would be nothing to prevent plaintiffs from joining as a defendant anyone with an ownership stake in the corporation.").

Plaintiff has alleged no such facts. Nor could he.

In the Seventh Circuit, "[e]fforts to 'pierce the corporate veil' are governed by the law of the state of incorporation." *Stromberg Metal Works, Inc. v. Press Mech., Inc.*, 77 F.3d 928, 933

(7th. Cir. 1996) (citation omitted). Plaintiff seeks to hold IMG liable under the TCPA for calls he alleges were initiated by the following IMG subsidiaries: Connexion Point, LLC, Berwick Insurance Group LLC, Your Insurance Group, LLC, and Family First Life LLC. Each of these entities are separate and distinct Delaware limited liability companies. *See* Pulkowski Decl. ¶¶ 6-7, Exs. B-E.[2] Therefore, to establish standing—and to state a claim against IMG for the alleged conduct of these subsidiary entities—Plaintiff was required to allege specific, plausible facts sufficient to pierce their corporate veils under Delaware law. *See Marvellous Day Elec.*, 900 F. Supp. 2d at 846.

Under Delaware law, "courts take the corporate form and corporate formalities very seriously" and "will disregard the corporate form *only in the exceptional case*." *Vichi v. Koninklijke Philips Elecs. N.V.*, 62 A.3d 26, 49 (Del. Ch. 2012) (cleaned up) (emphasis added). When considering whether to pierce the corporate veil, Delaware courts consider five factors: "(1) whether the company was adequately capitalized for the undertaking; (2) whether the company was solvent; (3) whether corporate formalities were observed; (4) whether the dominant shareholder siphoned company funds; and (5) whether, in general, the company simply functioned as a facade for the dominant shareholder." *Manichaean Cap., LLC v. Exela Techs., Inc.*, 251 A.3d 694, 706 (Del. Ch. 2021) (quoting *Doberstein v. G-P Indus., Inc.*, 2015 WL 6606484, at *4 (Del. Ch. Oct. 30, 2015)). No single factor is determinative, and courts determine whether to disregard the corporate form based on a combination of these factors and a final, prerequisite "element of injustice or unfairness." *Id.*; *Verdantus Advisors, LLC v. Parker Infrastructure Partners, LLC*,

[2] The Court may take judicial notice of the certificates of incorporation of these entities to identify their place of incorporation for purposes of this motion to dismiss. *See Seidel v. Byron*, 405 B.R. 277, 284-85 (N.D. Ill. 2009) (recognizing that it may take judicial notice of a "certificate of incorporation in deciding the motion to dismiss").

2022 WL 611274, at *2 (Del. Ch. Mar. 2, 2022) (internal citations omitted). To plead the requisite fraud or injustice, a plaintiff must plead "something more than the alleged wrong in the complaint" and instead suggest "a misuse of the corporate structure" to deprive creditors or otherwise lead to an unjust or unfair result. *Medi-Tec of Egypt Corp. v. Bausch & Lomb Surgical, France*, No. 19760-NC, 2004 WL 5366102, at *7 (Del. Ch. Mar. 4, 2004) (internal citation omitted).

Plaintiff alleges no facts related to even *one* of these five factors. There are no allegations regarding the capitalization of the entities, their solvency, or any corporate formalities. There are no allegations that IMG exercised any improper control over these entities to suggest that they were simply used as a façade. To the contrary, and as noted previously, Plaintiff repeatedly complains that IMG did not exert control or influence over these entities, emphasizing their independent and uncoordinated operations. *See, e.g.*, Compl. 229; 231; 232.

The Complaint also contains no allegations that respecting the corporate separateness of IMG and the subsidiaries would lead to an unfair or unjust resolution. *See Verdantus Advisors*, 2022 WL 611274 at *2; *Medi-Tec of Egypt Corp.*, 2004 WL 5366102, at *7. The only consequence of respecting the corporate form here is that Plaintiff will be required to plead his claims against the actual entities he alleges initiated calls to him that (he claims) violated the TCPA. There is no burden or injustice in requiring Plaintiff to allege claims against the entities he contends harmed him. This is not a case in which these entities are unknown—Plaintiff has specifically identified those entities in his Complaint. And Plaintiff does not allege any facts suggesting that he cannot obtain relief from these entities. He simply declined to allege claims against them.

Accordingly, Plaintiff's failure to plead any facts to pierce the corporate veil of the subsidiaries alleged to have caused his harm, and his inability to do so consistent with Rule 11, preclude a showing that the alleged injury is "fairly traceable to [IMG's] challenged conduct." *See*

Spokeo, 578 U.S. at 330, 339. Moreover, Plaintiff's inability to pierce the corporate veil means that his alleged injury cannot be "redressed by a favorable judicial decision." *Id*. In short, he has failed to allege facts to establish standing through valid theory of liability against IMG for the alleged acts of the subsidiaries. Therefore, Plaintiff's claims should be dismissed for lack of standing under Rule 12(b)(1), or, alternatively, for failing to state a claim against IMG under Rule 12(b)(6).

Plaintiff attempts to side-step this fatal flaw to his claims by alleging that these subsidiaries made the allegedly offending calls "on behalf" of IMG, shifting his characterization of these entities as subsidiaries to "agents and (sub)vendors" making calls on behalf of IMG under the TCPA. To be sure, the TCPA provides that a party may be liable under some circumstances for a call initiating by a third-party entity if the call was initiated "on behalf of" the party. 47 U.S.C. § 227. This is intended to prevent sellers from "avoid[ing] TCPA liability by outsourcing their telemarketing activities to unsupervised third parties" in such a way that "would leave consumers in many cases without an effective remedy for telemarketing intrusions, particularly when the telemarketers are judgment proof, unidentifiable, or located outside the United States." *Smith v. State Farm Mut. Auto. Ins. Co.*, 30 F. Supp. 3d 765, 774 (N.D. Ill. 2014). None of those concerns are implicated here where, as noted previously, the entities that allegedly initiated the calls have been specifically identified by Plaintiff in the complaint, are located in the United States, and there is no indication that they cannot provide any relief requested if ultimately found liable for the conduct of which Plaintiff complains.

Nor has Plaintiff alleged any actual facts to establish that these entities initiated calls "on behalf of" IMG under this standard. Plaintiff makes the general and conclusory allegation that IMG "develops and distributes life and health insurance and other products, which it telemarkets

to consumers through a network of subsidiaries, insurance agents, and (sub)vendors." Compl. ¶ 26. Yet this conclusory statement is wholly unsupported by any well-pled factual allegations. Rather, in every single one of those allegations, Plaintiff purports to link IMG to those calls or texts only "on information and belief," alleging that "[o]n information and belief," the calls and texts at issue were made "for the purpose of encouraging the purchase of goods, products, or services through" IMG. Compl. ¶¶ 107, 111, 118, 122, 128, 132, 138, 144, 150, 155, 158, 166, 171, 175, 180, 185, 198, 225.

Plaintiff alleges no factual basis for this information and belief. Nor could he. There are no allegations that IMG was mentioned in the calls, much less any allegations that any product purportedly sold by IMG was mentioned in the calls. Plaintiff apparently simply assumes that because these entities are subsidiaries of IMG, any conduct they engaged in was "on behalf of" IMG under the TCPA. But the TCPA's "on behalf of" language is not an end-run of the corporate separateness doctrine, making a parent company liable for the conduct of its subsidiaries without the need to pierce the corporate veil. Courts have universally rejected that proposition. *See e.g.*, *Klein v. Just Energy Grp., Inc.*, No. CV 14-1050, 2016 WL 3539137, at *13 (W.D. Pa. June 29, 2016) (dismissing plaintiff's TCPA claim against parent corporation in part because plaintiff "provide[d] no argument or evidence to justify disregarding the corporate veil…."); *Visser v. Caribbean Cruise Line, Inc.*, No. 1:13-CV-1029, 2020 WL 415847, at *11 (W.D. Mich. Jan. 27, 2020) (applying Michigan law to plaintiff's TCPA claim against an affiliate and holding that, to exercise personal jurisdiction over the parent company the plaintiff "would have to make a *prima facie* case for piercing the corporate veil"); *Fitzhenry v. Ushealth Grp., Inc.*, No. 2:15-CV-03062-DCN, 2016 WL 319958, at *5 (D.S.C. Jan. 27, 2016) (same, applying Fourth Circuit and South Carolina precedent); *Zarichny v. Complete Payment Recovery Servs., Inc.*, 80 F. Supp. 3d 610,

618-19 (E.D. Pa. 2015) (dismissing claims after plaintiff failed to allege facts to support a veil piercing determination and rejecting plaintiff's argument that the calling subsidiary was "engaged" by the parent company to "act on its behalf"); *Parrotte v. Lionetti Assocs., LLC*, No. CIV.A. ELH-13-2660, 2014 WL 1379790, at *4 (D. Md. Apr. 7, 2014) (dismissing claim against related entity because "plaintiff offered no justification for ignoring defendants' corporate form or piercing the corporate veil"); *Velez v. Portfolio Recovery Assocs., Inc.*, 881 F. Supp. 2d 1075, 1084 (E.D. Mo. 2012) (granting defendant's motion to dismiss for lack of personal jurisdiction in part because plaintiff failed to pierce the corporate veil between the parent company defendant and the non-defendant subsidiary that allegedly violated the TCPA).

Finally, even if the allegations passed muster under a facial challenge pursuant to Rule 12(b)(1) and 12(b)(6), though they do not, the claim fails under a factual challenge under Rule 12(b)(1) based on one simple, and undisputable fact: IMG is not a licensed insurance agency and does not sell insurance products. Pulkowski Decl. ¶¶ 3-6. Plaintiff's allegations that these subsidiaries placed calls to sell insurance products on behalf of IMG are wholly implausible in light of the fact that IMG does not sell insurance products.

CONCLUSION

Plaintiff has failed to plead sufficient facts to establish standing or to allege a plausible claim against IMG for the alleged calls of IMG's subsidiaries. Plaintiff's attempt to sue IMG for calls he admits were made by subsidiaries is no different than any attempt to sue a shareholder of any company for the acts of that company. It cannot be allowed without plausible allegations to pierce the corporate veil. Accordingly, the Complaint should be dismissed.

Dated: June 26, 2024

Respectfully submitted,

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