

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

Kenisha Cross, *on behalf of herself
and others similarly situated,*

Plaintiff,

v.

Wells Fargo Bank, N.A.,

Defendant.

No. 1:15cv1270

ANSWER TO COMPLAINT

Defendant Wells Fargo Bank, N.A. (“Wells Fargo”) files this Answer to Kenisha Cross’ (“Plaintiff”) Class Action Complaint (“Complaint”). In response to the Complaint, Wells Fargo states as follows:

1. Plaintiff’s allegations in Paragraph 1 of the Complaint call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. By way of further response, Wells Fargo denies that it violated the Telephone Consumer Protection Act (“TCPA”).
2. Wells Fargo denies the allegations in Paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. Plaintiff's allegations in Paragraph 3 of the Complaint regarding jurisdiction call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

4. Plaintiff's allegations in Paragraph 4 of the Complaint regarding venue call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 4 regarding Plaintiff's residence and, therefore, denies the same. Wells Fargo admits that it transacts business in the Northern District of Georgia.

PARTIES

5. Wells Fargo admits, upon information and belief, that Plaintiff is a natural person. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 5 regarding Plaintiff's residence and, therefore, denies the same.

6. Wells Fargo denies the allegations in Paragraph 6. By way of further response, Wells Fargo admits that it is a national association with its corporate offices at 420 Montgomery Street, San Francisco, CA 94104.

FACTUAL ALLEGATIONS

7. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 7 and, therefore, denies the same.

8. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 8 and, therefore, denies the same.

9. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 9 and, therefore, denies the same.

10. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 10 and, therefore, denies the same.

11. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 11 and, therefore, denies the same.

12. Wells Fargo denies the allegations in Paragraph 12 of the Complaint.

13. Wells Fargo denies the allegations in Paragraph 13 of the Complaint.

14. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 14 and, therefore, denies the same.

15. The allegations in Paragraph 15 of the Complaint call for legal conclusions as to the meaning of an automatic telephone dialing system under the TCPA and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

16. The allegations in Paragraph 16 of the Complaint call for legal conclusions as to the use of equipment with the capacity (i) to store or produce telephone numbers to be called, using a random or sequential number generator, and (ii) to dial such numbers; therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

17. The allegations in Paragraph 17 of the Complaint call for legal conclusions regarding legal interpretations by the FCC, and therefore, no response is required. To the extent the allegations are contrary to law, they are denied. In addition, Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 17 and, therefore, denies the same

18. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 18 and, therefore, denies the same. In addition, the allegations in Paragraph 18 of the Complaint call for legal conclusions regarding non-emergency purposes, and therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

19. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 19 and, therefore, denies the same.

20. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 20 and, therefore, denies the same.

21. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 21 and, therefore, denies the same.

22. Wells Fargo denies the allegations in Paragraph 22 of the Complaint.

23. Wells Fargo denies the allegations in Paragraph 23 of the Complaint.

24. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 24 and, therefore, denies the same.

25. The allegations in Paragraph 25 of the Complaint call for legal conclusions regarding business relationship, and therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

26. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 26 and, therefore, denies the same

27. The allegations in Paragraph 27 of the Complaint call for legal conclusions regarding express consent and automatic telephone dialing system. Therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

28. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 28 and, therefore, denies the same.

29. The allegations in Paragraph 29 of the Complaint call for legal conclusions regarding automatic telephone dialing system. Therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

CLASS ACTION ALLEGATION

30. The allegations in Paragraph 30 are not allegations of fact but, rather, allegations regarding the definition of the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action and denies that it violated the TCPA.

31. The allegations in Paragraph 31 are not allegations of fact but, rather, allegations regarding the definition of the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action and denies that it violated the TCPA.

32. The allegations in Paragraph 32 call for legal conclusions regarding numerosity and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

33. The allegations in Paragraph 33 call for legal conclusions regarding ascertainability of the purported class and, therefore, no response is required. To

the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

34. The allegations in Paragraph 34 call for legal conclusions regarding ascertainability of the purported class and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

35. Wells Fargo denies the allegations in Paragraph 35 of the Complaint.

36. The allegations in Paragraph 36 call for legal conclusions regarding typicality, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

37. Wells Fargo denies the allegations in Paragraph 37 of the Complaint.

38. The allegations in Paragraph 38 call for legal conclusions regarding commonality, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

39. The allegations in Paragraph 39 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are

denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

40. Wells Fargo denies the allegations in Paragraph 40 of the Complaint.

41. The allegations in Paragraph 41 call for legal conclusions regarding adequacy, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

42. The allegations in Paragraph 42 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

43. The allegations in Paragraph 43 are not allegations of fact but, rather, allegations regarding Plaintiff's intentions with respect to the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action.

44. The allegations in Paragraph 44 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

45. The allegations in Paragraph 45 are not allegations of fact but, rather, allegations regarding Plaintiff's counsel's intentions with respect to the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action.

46. The allegations in Paragraph 46 are not allegations of fact but, rather, allegations regarding Plaintiff's counsel's intentions with respect to the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action.

47. The allegations in Paragraph 47 call for legal conclusions regarding predominance, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

48. Wells Fargo denies the allegations in Paragraph 48, including in subparagraphs a. – e., of the Complaint.

49. Wells Fargo denies the allegations in Paragraph 49 of the Complaint.

50. Wells Fargo denies the allegations in Paragraph 50 of the Complaint.

51. The allegations in Paragraph 51 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are

denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

52. The allegations in Paragraph 52 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

53. The allegations in Paragraph 53 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

54. The allegations in Paragraph 54 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

55. The allegations in Paragraph 55 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

56. Wells Fargo denies the allegations in Paragraph 56 of the Complaint.

57. The allegations in Paragraph 57 call for legal conclusions, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

COUNT ONE: VIOLATION OF 47 U.S.C. § 227(b)(1)(a)(iii)

58. Plaintiff's allegations in Paragraph 58 of the Complaint are not allegations of fact but, rather, allegations reincorporating Plaintiff's previous paragraphs. In response, Wells Fargo reincorporates its responses to Plaintiff's previous allegations.

59. Wells Fargo denies the allegations in Paragraph 59 of the Complaint.

TRIAL BY JURY

60. The allegations in Paragraph 60 are not allegations of fact but, rather, allegations pertaining to Plaintiff's jury demand. Therefore, no response is required.

61. Wells Fargo denies the allegations in the WHEREFORE paragraph immediately following Paragraph 61 of the Complaint. Wells Fargo denies that this case can be certified as a class action, denies that Plaintiff or her counsel should represent any purported class, denies that Wells Fargo violated the TCPA, denies that an injunction should be awarded, and denies that Plaintiff or any purported class is entitled to any relief whatsoever.

AFFIRMATIVE AND OTHER DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

2. Plaintiff lacks standing to sue Wells Fargo and to represent any purported class members because she has not suffered an injury-in-fact as a result of Wells Fargo's alleged conduct.

3. The imposition of statutory damages against Wells Fargo under the TCPA on a purported class wide basis would violate the Due Process Provision of the United States Constitution.

4. The imposition of statutory damages against Wells Fargo under the TCPA on a purported class wide basis would violate the excessive fine restriction of the United States Constitution.

5. Plaintiff's claims, and the claims of purported class members, are barred to the extent they are untimely under any applicable statute of limitations.

6. Plaintiff's claims, and the claims of purported class members, are barred to the extent the purported claimant is not a called party within the meaning of the TCPA.

7. Plaintiff's claims, and the claims of purported class members, are barred because any calls alleged to have violated the TCPA occurred with prior consent.

8. Plaintiff and the purported class members are barred from recovery by the doctrine of laches due to the delay in asserting any purported TCPA claims and the resulting prejudice.

9. Plaintiff and the purported class members are barred from recovery to the extent they have failed to mitigate alleged damages.

10. Plaintiff and the purported class members cannot proceed as a class action because Plaintiff's claims cannot satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.

11. Plaintiff's claims, and the claims of purported class members, are barred to the extent any applicable contractual agreements require disputes to be resolved through arbitration.

12. Plaintiff's claims, and the claims of purported class members, are barred by the doctrine of unclean hands.

13. Plaintiff's claims, and the claims of the purported class members, are barred to the extent any alleged injuries were the result, in whole or in part, of the conduct, negligence, acts, or omissions of Plaintiff or the purported class members.

14. Plaintiff's claims, and the claims of the purported class members, are barred to the extent any alleged injuries were the result, in whole or in part, of the conduct, negligence, acts, or omissions of third parties beyond the control of Wells Fargo.

15. Plaintiff's claims, and the claims of the purported class members, are barred to the extent they are precluded by any previous waivers or releases of claims, including those related to previous settlement agreements.

16. Plaintiff's claims, and the claims of the purported class members, are barred by res judicata and judicial estoppel to the extent they failed to disclose such claims in previous bankruptcy proceedings.

Respectfully submitted this 9th day of June, 2015

/s/ Stephen Riddell
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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of June, 2015 I filed the foregoing Answer to Plaintiff's Complaint with the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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