

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION**

CANDACE D. ARLEDGE, individually, and  
on behalf of all others similarly situated,

Plaintiff,

v.

HARLEY DAVIDSON FINANCIAL  
SERVICES, INC.,

Defendant.

Case No. 1:21-cv-00974

**CLASS ACTION COMPLAINT**

**NOW COMES** Plaintiff, CANDACE D. ARLEDGE, individually, and on behalf of all others similarly situated, by and through her undersigned counsel, complaining of Defendant, HARLEY DAVIDSON FINANCIAL SERVICES, INC., as follows:

**NATURE OF ACTION**

1. This action seeks redress for Defendant’s violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, and the Texas Debt Collection Act (“TDCA”), Tex. Fin. Code Ann. § 392 *et seq.*

2. “The primary purpose of the TCPA was to protect individuals from the harassment, invasion of privacy, inconvenience, nuisance, and other harms associated with unsolicited, automated calls.” *Parchman v. SLM Corp.*, 896 F.3d 728, 738-39 (6th Cir. 2018) citing Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, § 2, 105 Stat. 2394 (1991).

3. As the Supreme Court recently observed, “Americans passionately disagree about many things. But they are largely united in their disdain for robocalls.” *Barr v. Am. Ass’n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

**JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331.

6. This Court has supplemental jurisdiction over Plaintiff’s state law claim pursuant to 28 U.S.C. § 1367.

7. Venue in this district is proper under 28 U.S.C. § 1391(b)(2).

**PARTIES**

8. CANDACE D. ARLEDGE (“Plaintiff”) is a natural person, over 18-years-of-age, who at all times relevant resided in this federal jurisdiction.

9. Plaintiff is a “person” as defined by 47 U.S.C. § 153(39).

10. Plaintiff is a “consumer” as defined by Tex. Fin. Code Ann. § 392.001(1).

11. HARLEY DAVIDSON FINANCIAL SERVICES, INC. (“Defendant”) is a financier of motorcycles for Harley Davidson and maintains its principal place of business at 222 West Adams Street, #2000, Chicago, Illinois 60606.

12. Defendant is a “person” as defined by 47 U.S.C. § 153(39).

13. Defendant is a “debt collector” as defined by Tex. Fin. Code Ann. § 392.001(6) as it directly or indirectly engages in debt collection.

**FACTUAL ALLEGATIONS**

14. At all times relevant, Plaintiff was the sole operator, possessor, and subscriber of the cellular telephone number ending in 8466.

15. At all times relevant, Plaintiff’s number ending in 8466 was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

16. At all times relevant, Plaintiff was financially responsible for her cellular telephone equipment and services.

17. Prior to the events giving rise to this action, Plaintiff's boyfriend, Leslie Flores ("Flores"), financed a motorcycle from Defendant.

18. In purchasing the motorcycle, Flores entered into a Retail Installment Contract ("subject debt") from Defendant; however, Plaintiff was not a co-borrower on the loan.

19. In May 2021, Plaintiff started to receive collection calls to her cellular telephone from Defendant seeking to collect on a past due payment from Flores.

20. Plaintiff would answer the telephone calls and advise Defendant that Flores was only a few days late and would be making a payment soon and to therefore stop calling her.

21. Nevertheless, Defendant continued to contact Plaintiff seeking payment on the subject debt.

22. Flores was able to make the May 2021 payment and became current on the subject debt.

23. However, in June 2021, Flores fell behind on the payment by a few days and Defendant renewed its collection efforts by calling Plaintiff.

24. Plaintiff repeatedly would advise Defendant that Flores would be making a payment and to cease contacting her.

25. Each time Flores was a few days late on payment of the subject debt, the collection efforts to Plaintiff would begin, despite Plaintiff's repeated requests to stop calling her.

26. In addition to the collection calls, Plaintiff has been receiving pre-recorded messages from Defendant as well from some of the telephone calls in which Plaintiff did not answer.

27. Specifically, the voicemails would state:

"This is Harley Davidson Financial Services. Please return this call at your earliest opportunity at 1-866-798-9775. We are available Monday through Thursday from 7am to 9pm, Friday 7am to 7pm, Saturday 7am to 4pm, and

Sunday noon to 9pm central time. Again, this is Harley Davidson Financial Services and our number is 1-866-798-9775. Thank you.”

28. Despite Plaintiff’s requests that the collection calls cease, Defendant continued placing harassing collection calls to Plaintiff’s cellular phone and leaving Plaintiff pre-recorded voice messages.

29. Plaintiff’s request fell on deaf ears and Defendant continued placing harassing collections calls to Plaintiff (including pre-recorded messages), including, but not limited to, calls from the phone numbers: (833) 920-2056 and (844) 664-7385.

30. In total, Defendant placed no less than 30 harassing phone calls, including pre-recorded messages to Plaintiff after Plaintiff initially requested that Defendant cease contact with her.

### **DAMAGES**

31. Defendant’s harassing phone calls and pre-recorded messages have severely disrupted Plaintiff’s everyday life and overall well-being.

32. Defendant’s harassing calls and pre-recorded messages have caused Plaintiff damages, including, aggravation that accompanies frequent unwanted phone calls, anxiety, emotional distress, increased risk of personal injury resulting from the distraction caused by the phone calls and text messages, wear and tear to Plaintiff’s cellular phone, temporary loss of use of Plaintiff’s cellular phone, invasion of privacy, loss of battery charge, loss of concentration, mental anguish, nuisance, the per-kilowatt electricity costs required to recharge Plaintiff’s cellular telephone as a result of increased usage of Plaintiff’s telephone services, and wasting Plaintiff’s time.

33. Moreover, each time Defendant placed a telephone call to Plaintiff, Defendant occupied Plaintiff's cellular phone such that Plaintiff was unable to receive other phone calls or otherwise utilize her cellular phone while her phone was ringing.

**CLASS ALLEGATIONS**

34. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

35. Plaintiff brings this action pursuant to Fed. R. Civ. P. 23(b)(2) and 23(b)(3) individually, and on behalf of all others similarly situated ("Putative Class") defined as follows:

All persons throughout the state of Texas (1) to whom Defendant placed, or caused to be placed, a call; (2) directed to a number assigned to a cellular telephone service; (3) using an artificial or prerecorded voice; (4) without his/her consent; (5) who do not have a business relationship with Defendant; and (6) within the four years preceding the date of this complaint through the date of class certification.

36. The following individuals are excluded from the Putative Class: (1) any Judge or Magistrate Judge presiding over this action and members of their families; (2) Defendant, Defendant's subsidiaries, parents, successors, predecessors, and any entity in which Defendant or their parents have a controlling interest and their current or former employees, officers, and directors; (3) Plaintiff's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Putative Class; (5) the legal representatives, successors, or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released.

**A. Numerosity**

37. Upon information and belief, the members of the Putative Class are so numerous that joinder of them is impracticable.

38. The exact number of the members of the Putative Class is unknown to Plaintiff at this time and can only be determined through targeted discovery.

39. The members of the Putative Class are ascertainable because the Class is defined by reference to objective criteria.

40. The members of the Putative Class are identifiable in that their names, addresses, and telephone numbers can be identified in business records maintained by Defendant.

**B. Commonality and Predominance**

41. There are many questions of law and fact common to the claims of Plaintiff and the Putative Class.

42. Those questions predominate over any questions that may affect individual members of the Putative Class.

**C. Typicality**

43. Plaintiff's claims are typical of members of the Putative Class because Plaintiff and members of the Putative Class are entitled to damages as a result of Defendant's conduct.

**D. Superiority and Manageability**

44. This case is also appropriate for class certification as class proceedings are superior to all other available methods for the efficient and fair adjudication of this controversy.

45. The damages suffered by the individual members of the Putative Class will likely be relatively small, especially given the burden and expense required for individual prosecution.

46. By contrast, a class action provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court.

47. Economies of effort, expense, and time will be fostered and uniformity of decisions ensured.

**E. Adequate Representation**

48. Plaintiff will adequately and fairly represent and protect the interests of the Putative Class.

49. Plaintiff has no interests antagonistic to those of the Putative Class and Defendant has no defenses unique to Plaintiff.

50. Plaintiff has retained competent and experienced counsel in consumer class action litigation.

**CLAIMS FOR RELIEF**

**COUNT I**

**Telephone Consumer Protection Act (47 U.S.C. § 227 *et. seq.*)  
(On behalf of Plaintiff and the Members of the Putative Class)**

51. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

52. The TCPA defines ATDS as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).

53. Upon information and belief, the system used by Defendant to place calls to Plaintiff has the capacity to use a random or sequential number generator to determine the order in which to pick phone numbers from a preloaded list of numbers of consumers that are allegedly in default on their payments.

54. Accordingly, the system employed by Defendant has the capacity – (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers.

55. As pled above, Defendant used an artificial or prerecorded voice, which automatically played upon Plaintiff answering the call or upon the call reaching Plaintiff's voicemail.

56. Defendant violated 47 U.S.C. § 227 (b)(1)(A)(iii) by placing no less than 30 non-emergency calls, including pre-recorded messages, including but not limited to the aforementioned collection calls and pre-recorded messages, to Plaintiff's cellular telephone, utilizing an ATDS without Plaintiff's consent.

57. As pled above, Plaintiff revoked consent to be called on her cellular phone.

58. As pled above, Plaintiff was severely harmed by Defendant's collection calls to her cellular phone.

59. Upon information and belief, Defendant has no system in place to document whether it has consent to contact consumers on their cellular phones.

60. Upon information and belief, Defendant has no policies and procedures in place to honor consumers' requests that collection calls cease.

61. Upon information and belief, Defendant knew its collection practices violated the TCPA, yet continued to employ them in order to maximize efficiency and revenue.

62. As a result of Defendant's violations of 47 U.S.C. §227(b)(1)(A)(iii). Plaintiff is entitled to receive \$500.00 in damages for each violation.

63. As a result of Defendant's knowing and willful violations of 47 U.S.C. §227 (b)(1)(A)(iii), Plaintiff is entitled to receive up to \$1,500.00 in treble damages for each violation.



**WHEREFORE**, Plaintiff, CANDACE D. ARLEDGE, on behalf of herself and the members of the Putative Class, requests the following relief:

- A. An order granting certification of the proposed class, including the designation of Plaintiff as the named representative, and the appointment of the undersigned as Class Counsel;
- B. a finding that Defendant violated 47 U.S.C. § 227 *et seq.*;
- C. an award of statutory damages of at least \$500.00 for each and every violation to Plaintiff and the members of the Putative Class for each such violation;
- D. an award of treble damages of up to \$1,500.00 for each and every violation to Plaintiff and the members of the Putative Class for each such violation; and
- E. an award of such other relief as this Court deems just and proper.

**COUNT II:**

**Texas Debt Collection Act (Tex. Fin. Code Ann. § 392 *et seq.*)  
(Plaintiff individually)**

64. All paragraphs of this Complaint are expressly adopted and incorporated herein as though fully set forth herein.

**Violation(s) of Tex. Fin. Code Ann § 392.302**

65. Subsection 392.302(4) of the Texas Finance Code provides:

[i]n debt collection, a debt collector may not oppress, harass, or abuse a person by:

- (4) causing a telephone to ring repeatedly or continuously, or making repeated or continuous telephone calls, with the intent to harass a person at the called number.

Tex. Fin. Code Ann. § 392.302(4).

66. Defendant violated Tex. Fin. Code Ann. § 392.302(4) by continuing to place phone calls and to Plaintiff after Plaintiff requested that Defendant cease all contact with Plaintiff.

67. Defendant's continuous phone calls and were made with intent to harass Plaintiff and coerce payment for a debt in which Plaintiff did not owe.

68. Plaintiff may enforce the provisions of Tex. Fin. Code Ann. § 392.302(4) to Tex. Fin. Code Ann. § 392.403, which provides:

- (a) A person may sue for:
  - (1) injunctive relief to prevent or restrain a violation of this chapter; and
  - (2) actual damages sustained as a result of a violation of this chapter.
- (b) A person who successfully maintains an action under Subsection (a) is entitled to attorney's fees reasonable related to the amount of work performed and costs.

**WHEREFORE**, Plaintiff CANDACE D. ARLEDGE requests the following relief:

- F. a finding that Defendant violated Tex. Fin. Code Ann. § 392.302(4);
- G. an award of injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1);
- H. an award of actual damages in an amount to be determined pursuant to Tex. Fin. Code Ann. § 392.403(a)(2);
- I. an award of reasonable attorney's fees and costs in an amount to be determined pursuant to Tex. Fin. Code Ann. § 392.403(b); and
- J. an award of such other relief as this Court deems just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Fed. R. Civ. P. 38(b), Plaintiff demands a trial by jury.

Date: October 27, 2021

Respectfully submitted,

**CANDACE D. ARLEDGE**

By: /s/ Marwan R. Daher

Mohammed O. Badwan, Esq.  
Marwan R. Daher, Esq.  
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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.)

I. (a) PLAINTIFFS

CANDACE D. ARLEDGE, individually, and on behalf of all others similarly situated

(b) County of Residence of First Listed Plaintiff McCulloch County (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Sulaiman Law Group, Ltd. 2500 South Highland Avenue, Suite 200, Lombard, IL 60148 (630) 575-8181

DEFENDANTS

HARLEY DAVIDSON FINANCIAL SERVICES, INC.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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 - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et seq. Brief description of cause: Unlawful Collection Debt Collection Practices

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 10/27/2021 SIGNATURE OF ATTORNEY OF RECORD s:/ Marwan R. Daher

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.  
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.  
**PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Harley Davidson Financial Services Hit with Class Action Over Alleged Automated Debt Collection Calls](#)

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