

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

FARRAH E. BATA,
Individually in part and in part on behalf of
herself and all other entities and persons
similarly situated,

Plaintiff,

v.

ARROWHEAD CLINIC OF TENNESSEE,
INC., and JOHN DOES 1-10, intending to
refer to those persons, Corporations or
other legal entities that acted as agents,
consultants, independent contractors or
representatives,

Defendants.

Case No. _____

Removed from Circuit Court of
Davidson County, State of Tennessee
Case No. 18C774
JURY DEMAND

NOTICE OF REMOVAL

Defendant, Arrowhead Clinic of Tennessee, Inc. (“Arrowhead”) respectfully removes this action to the United States District Court for the Middle District of Tennessee pursuant to 28 U.S.C. §§ 1331, 1441, and 1446. This action involves claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227, so federal question jurisdiction exists. 28 U.S.C. § 1331; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012). In support of this Notice of Removal, Arrowhead states as follows:

1. On March 26, 2018, Plaintiff filed a Complaint, commencing a civil action now styled *Farrah E. Bata, Individually in part and in part on behalf of herself and all other entities and persons similarly situated v. Arrowhead Clinic of Tennessee, Inc., and John Does 1-10, intending to refer to those persons, Corporations or other legal entities that acted as agents,*

consultants, independent contractors or representatives, Case No. 18C774, Circuit Court of Davidson County, Tennessee (“State Court Action”).

2. Copies of all process, pleadings, papers, and orders served upon Arrowhead in the State Court Action are attached as **Exhibits 1** through **3**. 28 U.S.C. § 1446(a).

3. The State Court Action is a civil action within this Court’s original jurisdiction pursuant to 28 U.S.C. § 1331. Count I of the Complaint asserts a claim under the Telephone Consumer Protection Act, 47 U.S.C. § 227, over which this Court has federal question jurisdiction. *See Mims*, 565 U.S. at 386. Count II, arising out of the same factual allegations, asserts a claim for violations of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101, *et seq.*, over which this Court has supplemental jurisdiction. 28 U.S.C. § 1367(a).

4. Venue is appropriate in this Court, as this Court is in the district in which the underlying state court action was pending. 28 U.S.C. § 1441(a).

5. Removal is timely. Arrowhead’s Registered Agent was personally served on March 27, 2018—within thirty days of removal. 28 U.S.C. § 1446(b).

6. Arrowhead is the only Defendant to have been properly joined and served; therefore, there is no other defendant whose consent to removal is required. 28 U.S.C. § 1446(b)(2)(A); *cf. Hicks v. Emery Worldwide, Inc.*, 254 F. Supp.2d 968, 972 n.4 (S.D. Ohio 2003) (consent of nominal defendants, such as John Does, is not required for removal).

7. Arrowhead will promptly serve written notice of the removal of the State Court Action upon Plaintiff’s counsel and shall file a copy of the Notice with the Clerk of the Circuit Court for Davidson County, Tennessee.

WHEREFORE, Defendant Arrowhead Clinic of Tennessee, Inc. hereby removes the State Court Action to this honorable Court.

Respectfully submitted,

NEAL & HARWELL, PLC

By: /s/ William T. Ramsey

William T. Ramsey, #9245

Erik C. Lybeck, #35233

1201 Demonbreun Street, Ste. 1000

Nashville, TN 37203

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(615) 726-0573 – Facsimile

wtr@nealharwell.com

elybeck@nealharwell.com

*Counsel for Defendant Arrowhead Clinic of
Tennessee, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served by U.S. and electronic mail
on the following counsel of record, this the 25th day of April, 2018.

Joe P. Leniski, Jr,
J. Gerard Stranch, IV
Anthony A. Orlandi
BRANSTETTER, STRANCH & JENNINGS, PLLC
The Freedom Center
223 Rosa Parks Avenue, Suite 200
Nashville, TN 37203
(615) 254-8801
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Attorneys for Plaintiff/Representative Plaintiff

/s/ William T. Ramsey

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

Farrah E. Bata, Individually in part and in part on behalf of herself and all other entities and persons similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)

Joe P Leniski, J. Gerard Stranch, & Anthony Orlandi
Branstetter, Stranch, & Jennings, PLLC
223 Rosa Parks Ave, Ste. 200, Nashville, TN 37203, (615) 254-8801

DEFENDANTS

Arrowhead Clinic of Tennessee, Inc. and John Does 1-10

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

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

Attorneys (If Known)

William T. Ramsey & Erik C. Lybeck
Neal & Harwell, PLC
1201 Demonbreun, Ste. 1000, Nashville, TN 37203, (615) 244-1713

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

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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)

- | | | | | | |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| | 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 checked="" 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 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 |

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 (Excludes 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	PERSONAL INJURY <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 - Medical Malpractice	PERSONAL INJURY <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 PERSONAL PROPERTY <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 LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management 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 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <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))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS			
<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	<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	Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <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		FEDERAL TAX SUITS <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 - 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):
47 U.S.C. 227

Brief description of cause:
Violation of the Telephone Consumer Protection Act

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 04/25/2018 SIGNATURE OF ATTORNEY OF RECORD
s/ William T. Ramsey

FOR OFFICE USE ONLY

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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- 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.

STATE OF TENNESSEE
DAVIDSON COUNTY
20TH JUDICIAL DISTRICT

- First
- Alias
- Pluries

FARRAH E. BATA, INDIVIDUALLY IN PART AND IN PART ON
BEHALF OF HERSELF AND ALL OTHER ENTITIES AND
PERSONS SIMILARLY SITUATED,
 Plaintiff

CIVIL ACTION
DOCKET NO. 18C774

Vs.

- Method of Service:
- Davidson County Sheriff
 - Out of County Sheriff
 - Secretary of State
 - Certified Mail
 - Personal Service
 - Commissioner of Insurance

ARROWHEAD CLINIC OF TENNESSEE, INC. AND JOHN
DOES 1-10, ET AL.
1148 Gallatin Pike S
Nashville, TN 37115
 Defendant

To the above named Defendant:

You are summoned to appear and defend a civil action filed against you in the Circuit Court, 1 Public Square, Room 302, P.O. Box 196303, Nashville, TN 37219-6303, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 3/26/18

RICHARD R. ROOKER
Circuit Court Clerk
Davidson County, Tennessee

By: *[Signature]*
Deputy Clerk

ATTORNEY FOR PLAINTIFF or PLAINTIFF'S ADDRESS	<u>JOE P. LENISKI, JR./J. GERARD STRANCH, IV/ANTHONY A. ORLANDI</u> <u>223 ROSA L PARKS AVE., SUITE 200</u> Address <u>NASHVILLE, TN 37203</u>
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TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RICHARD R. ROOKER
Circuit Court Clerk

Received this summons for service this _____ day of _____, 20____.

SHERIFF

 To request an ADA accommodation, please contact Dart Gore at (615) 880-3309.

FILED

2018 MAR 26 PM 3:46

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FARRAH E. BATA,
individually in part and in part on behalf of
herself and all other entities and
persons similarly situated,

[Handwritten Signature] D.C.

Plaintiff,

CIV. NO. 18C774
JURY DEMAND

vs.

ARROWHEAD CLINIC OF TENNESSEE,
INC, and JOHN DOES 1-10, intending to refer
to those persons, Corporations or other legal
entities that acted as agents, consultants,
independent contractors or representatives,

Defendants.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF UNDER THE
TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, AND VIOLATIONS
OF THE TENNESSEE CONSUMER PROTECTION ACT, TENN. CODE ANN. § 47-18-

104

COMES now Plaintiff/Representative Plaintiff Farrah E. Bata, in part on behalf of herself and in part on behalf of herself and all other persons or entities similarly situated, as Representative Plaintiff in part and in part as Plaintiff, and files this Complaint against the Defendants Arrowhead Clinic of Tennessee, Inc. ("Arrowhead") and John Does 1-10. Plaintiff/Representative Plaintiff brings this Complaint to stop Defendants' practice of sending unsolicited text messages to the cellular telephones of Plaintiff/Representative Plaintiff and others in the class using an automatic telephone dialing system ("ADTS") without their prior express consent, and to obtain redress for all persons so injured by Defendants. Plaintiff/Representative Plaintiff further brings this action on her own behalf to stop Defendants' practice of violating the Tennessee Consumer Protection Act by fraudulently misrepresenting their identity and their services Plaintiff/Representative Plaintiff. For her Complaint,

Plaintiff/Representative Plaintiff alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys and would respectfully show the Court as follows:

PARTIES, JURISDICTION AND VENUE

1. Plaintiff/Representative Plaintiff Farrah E. Bata is a Tennessee citizen residing in Clarksville, Tennessee. Hereinafter, Farrah E. Bata will be referred to in her individual capacity as “Plaintiff/Representative Plaintiff” or “Plaintiff” or “Representative Plaintiff.”

2. Defendant Arrowhead Clinic of Tennessee, Inc. is, upon information and belief, a Tennessee corporation, having an address of 1148 Gallatin Pike S, Madison, Tennessee 37115-4611. The registered agent is listed as Arrowhead Clinic of Tennessee at the same principal address.

3. Defendants John Does 1-10 represent those persons, corporations, or other legal entities that acted as agents, consultants, independent contractors or representatives of Defendant J & J and/or who assisted them in creating, publishing, broadcasting and faxing the documents received on the fax machine by Plaintiff/Representative Plaintiff, whose identities at this time are unknown but will be substituted by amendment when ascertained.

4. The claims of the class of persons represented by the Representative Plaintiff arise pursuant to the provisions of the Telephone Consumer Protection Act, 47 U.S.C. § 227 (hereinafter, “TCPA”).

5. The claims of Plaintiff arise pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-104.

6. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 20-2-223, and service will be completed in accordance with Tenn. R. Civ. Pro. 4.05. This Court has jurisdiction over the Defendants pursuant to Tenn. Code Ann. § 20-2-201/20-2-223 and because

at all relevant times, the conduct complained of arises out of business they conducted in Tennessee.

7. Venue is proper in this County pursuant to Tenn. Code Ann. § 20-4-102 in that the at least one of the parties to this proceeding has it's principle place of business in this County and some of the events, if not all, leading to the filing of this suit arose out an automobile accident that occurred in Davidson County.

FACTUAL BACKGROUND

8. On March 6, 2018, Plaintiff/Representative Plaintiff was in an automobile accident and sought medical treatment at one of Tennova's medical facilities in Clarksville, Tennessee, which prior to joining the Community Health Systems network in January 2016, was a healthcare provider known as Gateway Medical Center. On her intake papers, Plaintiff/Representative Plaintiff listed her cellular telephone number as her contact number; however, nowhere either orally or in writing did Plaintiff/Representative Plaintiff give Tennova or any other third-party permission to send her marketing messages to that cell phone number.

9. On or about March 8, 2018, Plaintiff/Representative Plaintiff received, on her cell phone, a series of text from the phone number (615) 881-6711 stating: "Kortney here with Gateway Medical scheduling office for Arrowhead Clinic." The text then went on to state two different addresses of Arrowhead Clinic and "only thing you need to bring is your ID." as well as "if you're hurting go ahead and come on in with absolutely no cost to you." The second text message, which immediately followed the first, provided a URL address of the Arrowhead Clinic website. On or about March 12, 2018, Representative Plaintiff received, on her cell phone, a text from the same phone number which directly replicated the previous texts sent on March 8, 2018, suggesting that it was sent via ADTS.

10. Copies of the text messages that Plaintiff/Representative Plaintiff received are attached hereto as Exhibit A.

11. Plaintiff/Representative Plaintiff then reached out to the number on the text message, which was answered by “Kortney” who declared she was “with Arrowhead Clinic.”

12. Plaintiff/Representative Plaintiff has, and at all relevant times had, a cellular telephone with text messaging capabilities. Plaintiff/Representative Plaintiff receives text messages (“texts”) at the cell number associated with that cellular telephone.

12. Defendant Arrowhead is a Tennessee for-profit entity, which offers chiropractic and other pain relief treatment to citizens of the States of Tennessee, Georgia and the surrounding region. Defendant Arrowhead advertises its services on television, has an internet website, blog, and online attorney referral portal, and encourages individuals to “CALL NOW!” at 800-961-PAIN.

COUNT 1
VIOLATION OF THE TCPA, 47 USC §227
(ON BEHALF OF REPRESENTATIVE PLAINTIFF AND THE CLASS)

13. All of the preceding paragraphs are incorporated by reference as if set forth fully forth herein.

14. Defendants and/or their agents sent unsolicited text messages via ATDS to cellular telephone numbers belonging to Representative Plaintiff and the Class *en masse* without their prior express consent.

15. Defendants sent the text messages, or had them sent on its behalf, to Representative Plaintiff and the Class using equipment that had the capacity to store or produce telephone numbers to be called using a random or sequential number generator, and to dial such numbers.

A. **TCPA Prohibits Robotext Messages Sent Via ADTS Without Prior Express Consent**

16. Congress passed the TCPA to protect individual consumers from receiving intrusive and unwanted calls. *See Mims v. Arrow Fin. Servs., LLC*, U.S. , 132 S. Ct. 740, 745, 181 L. Ed. 2d 881 (2012); *see also* Pub. L. 102-243, § 2, ¶¶ 5-6, 9-10, 13-14, 105 Stat 2394 (1991) (Congress' findings that automated calls and prerecorded messages are a "nuisance," an "invasion of privacy," and "when an emergency or medical assistance telephone line is seized, a risk to public safety.").

17. The term "call" under the TCPA and its promulgating regulations includes text messages. *See* Rules and Regulation Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, para. 165 (2003) (2003 TCPA Order).

18. The three elements of a TCPA claim are: (1) the defendant called a cellular telephone number; (2) using an automatic telephone dialing system; (3) without the recipient's prior express consent. 47 U.S.C. § 227(b)(1).

19. The Federal Communications Commission ("FCC") is empowered to implement rules and regulations meant to promulgate the TCPA, including the meaning of "prior express consent."

20. Under the TCPA and its promulgating regulations, nonprofit, tax-exempt entities may send unsolicited text messages to a cellular telephone number so long as there is no commercial message (*i.e.* the message is non-telemarketing, informational in nature) and it has received prior express consent to send such text message. The prior express consent required in this provision can be verbal and does not have to be in writing.

21. The FCC has stated that even if consumers provide their telephone number for

legitimate, non-telemarketing purpose, the consumers do not expect to receive calls "that go beyond the limited purpose for which . . . consent may have been granted." 27 FCC Rcd. at 1839.

22. Upon information and belief, Defendants sent the unsolicited text messages at issue to the cell phone of Representative Plaintiff and of the other putative Class members in an effort to advertise their services without first obtaining prior express consent, using an ADTS, all without the consent of either the Representative Plaintiff or the Class members, in violation of the TCPA.

23. Neither Representative Plaintiff, nor the other members of the Class, ever gave prior express consent to have Defendants send the unsolicited text messages at issue to their cell phones.

24. Furthermore, Defendants did not affirmatively obtain the necessary prior express consent before sending the illegal text messages at issue to the cellular telephone numbers of Representative Plaintiff or the Class.

25. By illegally contacting Representative Plaintiff via her cellular telephone with the text messages at issue without her express consent, Defendants caused her actual harm, including invading her privacy, causing her to incur reduced telephone time and capacity for which she had previously paid by having to retrieve or administer the Defendants' illegal text messages, as well as the aggravation, nuisance, and harassment that necessarily accompanies the receipt of unsolicited, serial text messages.

26. In response to Defendants' unlawful conduct, Representative Plaintiff files the instant lawsuit seeking to enjoin Defendants from sending unsolicited text message activities and an award of actual and statutory damages to the members of the Class under the TCPA, trebled due to their willful and knowing conduct, together with costs and reasonable attorneys' fees.

B. Representative Plaintiff and the Class Have a Valid Claim for Relief

27. Paragraph (3) of 47 U.S.C. § 227(b) provides:

(3) 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.

If the court finds that the defendant willfully or knowingly violated this subsection or the regulations prescribed under this subsection, the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B) of this paragraph.

28. The texts received by Representative Plaintiff and the Class from Defendants were unsolicited.

29. Representative Plaintiff and the Class did not give any prior express consent, verbal or otherwise, to receive the texts described herein and displayed in Exhibit A.

30. Defendants, and/or their employees and/or its agents, created the texts, including the substance of the texts, in Exhibit A and had the capability to control the contents thereof.

31. Defendants, and/or their employees and/or their agents, determined the telephone numbers to which the texts in Exhibit A were sent to the Representative Plaintiff and other recipients.

32. Upon information and belief, Defendants sent the texts in Exhibit A to thousands of cell phone numbers located in or around Tennessee.

33. Said transmissions of texts in Exhibit A were made for the purpose of advertising

the services available from Defendants.

34. Representative Plaintiff further alleges that in each instance that a text message was sent, Defendants did so willfully or knowingly.

35. Representative Plaintiff further alleges on information and belief that in each instance Defendants had actual notice of participation, or a high degree of involvement, in a plan to transmit unsolicited texts to cell phones by, for example, participating in preparing their content, providing or obtaining the cell phone numbers of Representative Plaintiff or other Class recipients, and knowing that Representative Plaintiff or other Class recipients had not authorized the texts to be sent by prior express invitation or permission.

36. Representative Plaintiff therefore alleged that Defendants violated 47 U.S.C. § 227.

C. Class Action Allegations

37. Representative Plaintiff brings this action pursuant to Tenn. R. Civ. Pro. 23 on behalf of themselves and the following classes (the “Class”) defined as follows:

All individuals in the United States who received text message to their cellular telephone without that individual’s prior express consent offering the recipient a free visit to an Arrowhead Clinic location.

38. Excluded from the Class are: (1) Defendants and any entity in which Defendants has a controlling interest, and their legal representatives, officers, directors, assignees, and successors, and any co-conspirators; and (2) any judge or justice to whom this action is assigned, together with any relative of such judge or justice within the third degree of relationship, and the spouse of any such person.

39. Upon information and belief, Representative Plaintiff alleges that unsolicited,

texts sent on behalf of the Defendants for promotional purposes have been transmitted to hundreds if not thousands of cellular telephones in and around Tennessee without their prior express consent through an intentional and persistent course of conduct. Each such transmission constitutes a separate violation of the TCPA. Because the Class members are dispersed and are believed to number in the hundreds if not thousands, individual joinder is impractical in satisfaction of Tenn. R. Civ. Pro. 23.01. The disposition of the claims of the Class members in a single action will provide substantial benefits to all parties and to the Court.

40. Representative Plaintiff's claims are typical of the claims of the Class, as required by Tenn. R. Civ. Pro. 23 in that Representative Plaintiff received an unsolicited text without her consent from Defendant promoting Defendants' services during the proposed Class Period.

41. The factual and legal bases of Defendants' misconduct are common to all members of the Class and represent a common cause of injury to Representative Plaintiff and the Class members.

42. Numerous questions of law and fact are common to the Class and predominate over questions affecting only individual Class members, as required by Tenn. R. Civ. Pro. 23.02. Such common questions including, but are not limited to:

- i. Whether Defendants' conduct constitutes a violation of the TCPA;
- ii. whether the equipment Defendant used to transmit the text messages in question was an automatic telephone dialing system as contemplated by the TCPA; and
- iii. whether Defendants obtained prior express consent to send the text messages in question; and
- iv. whether Class members are entitled to treble damages based on the willfulness of Defendants' conduct.

43. Representative Plaintiff's claims are typical of the claims of the Class because they arise from the same course of conduct by Defendants and the relief sought is common.

44. The Class is ascertainable, as the Class is defined using objective criteria and Class Members who received unsolicited texts from Defendants without their consent are easily identifiable based on existing telephone and other business records.

45. Representative Plaintiff will fairly and adequately represent and protect the Interests of the Class, as required by Tenn. R. Civ. Pro. 23.01. Moreover, Representative Plaintiff has retained counsel with substantial experience in the prosecution of nationwide class actions. Representative Plaintiff and her counsel are committed to the vigorous prosecution of this action on behalf of the Class and have the financial resources to do so. Neither Representative Plaintiff nor their counsel has any interests adverse to those of the Class.

46. By sending the unsolicited text messages to the Representative Plaintiff and the Class, Defendants have violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of Defendants' unlawful conduct, the members of the Class suffered actual damages in the form of invasion of privacy, certain charges or reduced telephone time and capacity for which they had previously paid by having to retrieve or administer the Defendants' illegal text messages, as well as the aggravation, nuisance and harassment that necessarily accompanies the receipt of unsolicited, serial text messages. Under section 227(b)(3)(B) are each entitled to, inter alia, a minimum of \$500.00 in damages for each such violation of the TCPA, plus additional actual damages as may be appropriate.

47. Should the Court determine that Defendants' conduct was willful and knowing, the Court may, pursuant to section 227(b)(3)(C), treble the amount of damages recoverable by Representative Plaintiff and the other members of the Class.

COUNT II
VIOLATIONS OF THE TENNESSEE CONSUMER PROTECTION ACT,
TENN. CODE ANN. § 47-18-104
(ON BEHALF OF PLAINTIFF INDIVIDUALLY)

48. All of the preceding paragraphs are incorporated by reference as if set forth fully forth herein.

49. Under the Tennessee Consumer Protection Act of 1977 (“TennCPA”), Tenn. Code Ann. § 47-18-104 *et seq.*, prohibits unfair or deceptive acts or practices affecting trade or commerce in this state.

50. Under the TennCPA, it is an unfair or deceptive act or practice to falsely pass off goods or services as those of another. The Defendants falsely represented to the Plaintiff in the text messages that they were associated with “Gateway Medical”, the former owner of Tennova where Plaintiff was seen for her injuries related to the automobile accident. These false representations occurred as a result of events arising out of the automobile accident in Davidson County. Tenn. Code Ann. § 47-18-104(1).

51. Under the TennCPA, it is also unlawful to cause likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services. Tenn. Code Ann. § 47-18-104(2). The Defendants falsely represented to the Plaintiff in the text messages that they were associated with “Gateway Medical”, the former owner of Tennova where Plaintiff was seen for her injuries related to the automobile accident.

52. Under the TennCPA, it is also unlawful to cause likelihood of confusion or misunderstanding as to affiliation, connection or association with, or certification by, another. Tenn. Code Ann. § 47-18-104(3).

53. Under the TennCPA, it is also unlawful to Using deceptive representations or

designations of geographic origin in connection with goods or services Tenn. Code Ann. § 47-18-104(4).

54. Under the TennCPA, it is also unlawful to represent that “goods or services have sponsorship, approval, [or] characteristics” that they do not have or that “a person has a sponsorship approval, status, affiliation or connection that such person does not have.” Tenn. Code Ann. § 47-18-104 (5). Here, the Defendants represented by act or omission that their pain management services are associated with Gateway Medical Center/Tennova, or that physicians at Gateway Medical Center/Tennova prescribed their services to the Plaintiff.

55. Under the TennCPA, it also unlawful to “us[e] statements or illustrations in any advertisement which create a false impression of the grade, quality, quantity, make, value, age, size, color, usability or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the buyer may be switched from the advertised goods or services to other goods or services.” Here, Defendants represented that they were with Gateway Medical Center/Tennova, and that the pain management services being offered in the text messages originated with or were sponsored by Gateway Medical Center/Tennova, when in reality, the text messages being received by Plaintiff were being sent by Defendants and lacked any origin or sponsorship by Gateway Medical Center/Tennova.

56. Under the TennCPA, it is also unlawful to represent that a service, replacement or repair is needed when it is not. Tenn. Code Ann. § 47-18-104 (13).

57. Under the TennCPA, it is also unlawful to engage in any other act or practice which is deceptive to the consumer or to any other person. Tenn. Code Ann. § 47-18-104 (27).

58. As a direct and proximate result of each of the Defendants’ TCPA violations, the

Plaintiffs have suffered damages.

59. Accordingly, the Plaintiff is entitled to recover all actual and statutory damages sustained as a result of the Defendants' unfair and deceptive practices in violation of the TennCPA.

60. The Defendants committed all of these TennCPA violations willfully and knowingly. The Defendants acted in bad faith. Therefore, the Plaintiff is entitled to treble damages under Tenn. Code Ann. § 47-18-109(a)(3).

61. Under Tenn. Code Ann. § 47-18-109(e)(1), the Plaintiff is also entitled to recover reasonable attorney's fees from the Defendants.

PRAYER FOR RELIEF

WHEREFORE, Representative Plaintiff respectfully prays for the following relief:

- a. An Order certifying the claims of the Representative Plaintiff and all other persons similarly situated as a Class and Subclass as defined above under the Telephone Consumer Protection Act, and appointing Representative Plaintiff and her counsel as Class representatives and Class counsel, respectively;
- b. An award of actual and statutory damages;
- c. An award to Plaintiff(s) of treble damages;
- d. An injunction requiring Defendants to cease all unsolicited text message activities, and otherwise protecting the interests of the Class;
- e. An injunction requiring Defendants to cease the multiple violations of the Tennessee Consumer Protection Act as outlined above;
- f. An award of reasonable attorneys' fees and costs;
- g. Trial by jury as to all issues so triable; and

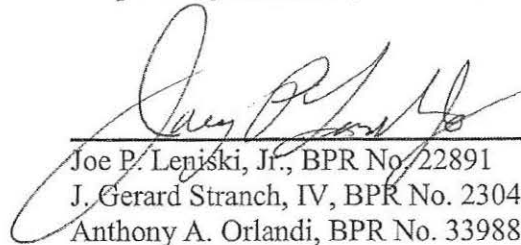
g. Other and further relief as is just and equitable under the circumstances.

JURY TRIAL DEMANDED

Plaintiff/Representative Plaintiff hereby demands a trial by jury as to all issues in the above matter.

DATED: March 26, 2018

Respectfully submitted,



Joe P. Leniski, Jr., BPR No. 22891

J. Gerard Stranch, IV, BPR No. 23045

Anthony A. Orlandi, BPR No. 33988

BRANSTETTER, STRANCH & JENNINGS, PLLC

The Freedom Center

223 Rosa Parks Avenue, Suite 200

Nashville, Tennessee 37203

(615) 254-8801

jleniski@bsjfirm.com

gstranch@bsjfirm.com

aorlandi@bsjfirm.com

Attorneys for Plaintiff/Representative Plaintiff



+1 (615) 881-6711

iMessage
Thu, Mar 8, 12:51 PM

Kortney here with Gateway
Medical scheduling office for

Arrowhead Clinic
5511 Edmondson Pike , Suite
205
Nashville TN 37211
615-679-9149

Arrowhead Clinic
1148 Gallatin Pike South
Madison TN 37115
615-454-4843

Office hours 9-7pm with lunch
from 1-3

Only thing you need to bring is
your ID .
If you're hurting go ahead and
come on in with absolutely no



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iMessage 



1

IN THE CIRCUIT COURT OF DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

FILED
2018 MAR 28 PM 3:22

RICHARD A. BRANSTETTER, CLERK

D.C.

FARRAH E. BATA,
individually in part and in part on behalf of
herself and all other entities and
persons similarly situated,

Plaintiff,

vs.

ARROWHEAD CLINIC OF TENNESSEE,
INC, and JOHN DOES 1-10, intending to refer
to those persons, Corporations or other legal
entities that acted as agents, consultants,
independent contractors or representatives,

Defendants.

CIV. NO. 18C774
JURY DEMAND

PLAINTIFF'S NOTICE OF FILING

Comes now, the Plaintiff, by and through her undersigned counsel, and provides this Notice of Filing of the relevant text messages received by the Plaintiff in this matter (noted as Exhibit A to the Complaint and attached hereto as the same). This document was inadvertently left off the original Complaint, which was filed with the Court on March 26, 2018.

DATED: March 28, 2018

Respectfully submitted,

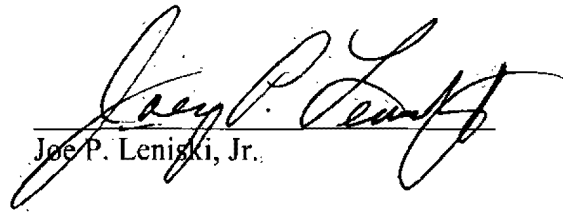
Joe P. Leniski, Jr., BPR No. 22891
J. Gerard Stranch, IV, BPR No. 23045
Anthony A. Orlandi, BPR No. 33988
BRANSTETTER, STRANCH
& JENNINGS, PLLC
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(615) 254-8801
jleniski@bsjfirm.com
gstranch@bsjfirm.com
aorlandi@bsjfirm.com
*Attorneys for Plaintiff/Representative
Plaintiff*

CERTIFICATE SERVICE

I do hereby certify that the Notice of Filing was provided on the 28th day of March, 2018,

via certified, U.S. mail postage prepaid to the following:

Arrowhead Clinic of Tennessee, Inc.
1148 Gallatin Pike S
Madison, Tennessee 37115



Joe P. Lenigki, Jr.



+1 (615) 881-6711

iMessage
Thu, Mar 8, 12:51 PM

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iMessage 



Copy

CIRCUIT COURT SUMMONS

NASHVILLE, TENNESSEE

2018 MAR 26 PM 3:47

STATE OF TENNESSEE
DAVIDSON COUNTY
20TH JUDICIAL DISTRICT

- First
- Alias
- Pluries

RICHARD R. ROOKER, CLERK

M Johnson
FARRAH E. BATA, INDIVIDUALLY IN PART AND IN PART ON
BEHALF OF HERSELF AND ALL OTHER ENTITIES AND
PERSONS SIMILARLY SITUATED,

Plaintiff

Vs.

ARROWHEAD CLINIC OF TENNESSEE, INC. AND JOHN
DOES 1-10, ET AL.

Defendant

CIVIL ACTION DOCKET NO. 18C774

Method of Service:

- Davidson County Sheriff
- Out of County Sheriff
- Secretary of State
- Certified Mail
- Personal Service
- Commissioner of Insurance

DI W/C

To the above named Defendant:

You are summoned to appear and defend a civil action filed against you in the Circuit Court, 1 Public Square, Room 302, P.O. Box 196303, Nashville, TN 37219-6303, and your defense must be made within thirty (30) days from the date this summons is served upon you. You are further directed to file your defense with the Clerk of the Court and send a copy to the Plaintiff's attorney at the address listed below.

In case of your failure to defend this action by the above date, judgment by default will be rendered against you for the relief demanded in the complaint.

ISSUED: 3/26/18

RICHARD R. ROOKER
Circuit Court Clerk
Davidson County, Tennessee

By: *M Johnson*
Deputy Clerk

ATTORNEY FOR PLAINTIFF
or
PLAINTIFF'S ADDRESS

JOE P. LENISKI, JR./J. GERARD STRANCH, IV/ANTHONY A. ORLANDI
223 ROSA L PARKS AVE., SUITE 200
Address
NASHVILLE, TN 37203

TO THE SHERIFF:

Please execute this summons and make your return hereon as provided by law.

RICHARD R. ROOKER
Circuit Court Clerk

Received this summons for service this _____ day of _____, 20____.

SHERIFF

 To request an ADA accommodation, please contact Dart Gore at (615) 880-3309.

Copy

RETURN ON PERSONAL SERVICE OF SUMMONS

I hereby certify and return that on the 27th day of March, 2018, I:

served this summons and complaint/petition on Arrowhead Clinic of Tennessee, Inc.

in the following manner:

via personal service to registered Agent, Arrowhead Clinic of Tennessee

failed to serve this summons within 90 days after its issuance because _____

(see below)


Sheriff/Process Server



RETURN ON SERVICE OF SUMMONS BY MAIL

I hereby certify and return, that on the _____ day of _____, 20____ I sent, postage prepaid by registered return receipt mail or certified return receipt mail, a certified copy of the summons and a copy of the complaint in Docket No. _____ to the defendant, _____. On the _____ day of _____, I received the return receipt for said registered or certified mail, which had been signed by _____ on the _____ day of _____, 20____. Said return receipt is attached to this original summons and both documents are being sent herewith to the Circuit Court Clerk for filing.

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS _____ DAY OF _____, 20____.


PLAINTIFF, PLAINTIFF'S ATTORNEY OR OTHER PERSON
AUTHORIZED BY STATUTE TO SERVE PROCESS

NOTARY PUBLIC or _____ DEPUTY CLERK
MY COMMISSION EXPIRES: _____

NOTICE

TO THE DEFENDANT(S):

Tennessee law provides a ten thousand dollar (\$10,000.00) debtor's equity interest personal property exemption from execution or seizure to satisfy a judgment. If a judgment should be entered against you in this action and you wish to claim property as exempt, you must file a written list, under oath, of the items you wish to claim as exempt with the clerk of the court. The list may be filed at any time and may be changed by you thereafter as necessary; however, unless it is filed before the judgment becomes final, it will not be effective as to any execution or garnishment issued prior to the filing of the list. Certain items are automatically exempt by law and do not need to be listed; these include items of necessary wearing apparel (clothing) for yourself and your family and trunks or other receptacles necessary to contain such apparel, family portraits, the family Bible, and school books. Should any of these items be seized, you would have the right to recover them. If you do not understand your exemption right or how to exercise it, you may wish to seek the counsel of a lawyer.

ATTACH
RETURN
RECEIPT
HERE
(IF APPLICABLE)

STATE OF TENNESSEE
COUNTY OF DAVIDSON

I, Richard R. Rooker, Clerk of the Circuit Court in the State and County aforesaid, do hereby certify this to be a true and correct copy of the original summons issued in this case.

RICHARD R. ROOKER, CLERK

(To be completed only if copy certification required.)

By: _____ D.C.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Arrowhead Clinic of Tennessee Sued Over Unwanted Text Message Ads](#)
