

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

DIAMOND B. COLLINS, individually, and
on behalf of all others similarly situated,

Plaintiff,

v.

HAWX, LLC d/b/a HAWX PEST
CONTROL, LLC

Defendant.

Case No.1:21-cv-05401

CLASS ACTION COMPLAINT

NOW COMES, DIAMOND B. COLLINS (“Plaintiff”), individually, and on behalf of all others similarly situated, by and through her undersigned counsel, complaining of HAWX, LLC d/b/a HAWX PEST CONTROL, LLC (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action seeking redress for Defendant’s violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *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

4. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 as this case arises under the TCPA, a federal statute.

5. Venue in this district is proper under 28 U.S.C. § 1391(b)(1) as Defendant resides in this judicial district.

PARTIES

6. Plaintiff is a natural person, over 18-years-of-age, who at all times relevant resided in Fayetteville, North Carolina.

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

8. Defendant is a limited liability company that maintains its principal place of business in West Chicago, Illinois.

9. Defendant provides pest control services to consumers in numerous states in the United States, including Illinois and North Carolina.

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

FACTUAL ALLEGATIONS

11. At all times relevant, Plaintiff was the sole operator, possessor, and subscriber of the cellular telephone number ending in 9418.

12. At all times relevant, Plaintiff’s number ending in 9418 was assigned to a cellular telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

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

14. In early 2020, Plaintiff signed up for pest control services with Defendant.

15. Plaintiff soon discovered that Defendant's services were ineffective as she noticed more bugs after Defendant commenced its services than prior to the commencement of Defendant's services.

16. In August or September 2020, Plaintiff called Defendant and stated that she no longer needed Defendant's services.

17. In response, Defendant offered to send another technician to her home to repeat the treatment.

18. Plaintiff declined Defendant's offer and Defendant agreed to honor Plaintiff's cancellation request.

19. At that time of cancellation, Defendant advised Plaintiff that she did not owe any money and that she would not be billed further.

20. In September 2020, for reasons unknown to Plaintiff, Defendant sent another technician to her home after she cancelled Defendant's services.

21. Before the technician arrived, Plaintiff received an email from Defendant stating that a technician was on the way to her home.

22. Plaintiff immediately called Defendant and inquired as to the reason Defendant was sending another technician considering Plaintiff cancelled Defendant's services.

23. Defendant apologized and stated that the system must not have been updated properly.

24. When the technician arrived at Plaintiff's house, Plaintiff asked that the technician leave.

25. The technician stated that he was required to walk around Plaintiff's home and take pictures. In response, Plaintiff advised the technician that she does not authorize him to walk

around her home and take pictures and again requested that the technician leave her property. The technician complied with Plaintiff's request and left Plaintiff's home.

26. In September 2020, Plaintiff sent a letter to Defendant reiterating that she cancelled her services and requested that Defendant no longer (1) come to her home, (2) email her, (3) call her, or (4) contact her in any way.

27. In October 2020, Plaintiff started receiving collection calls from Defendant in an attempt to collect a balance allegedly due on her account ("subject debt").

28. Plaintiff answered some of Defendant's collection calls and disputed that she owed a balance on the account.

29. Whenever Plaintiff asked for a breakdown of the charges, Defendant was unable to provide Plaintiff with an itemization or otherwise substantiate the balance that Defendant sought to collect from Plaintiff.

30. Despite Plaintiff's dispute of the subject debt and Defendant's failure to substantiate it, Defendant continued placing collection calls to Plaintiff's cellular phone.

31. When Plaintiff answered Defendant's erroneous collection calls, Plaintiff was greeted with an automated message asking Plaintiff to wait for a live representative.

32. In unanswered calls, Defendant left prerecorded voicemails on Plaintiff's cellular phone stating:

"Hello, this is Hawx Services calling in regards to the balance on your account. We would love to help you take care of this. Please give us a call at [phone number] or pay on your online portal at hawx.pestportals.com. That's Hawx, h-a-w-x.pestportal.com. Thank you."

33. All of Defendant's prerecorded messages were 22 seconds long and delivered the same message described in Paragraph 32.

34. In addition to the prerecorded calls and voicemails, Defendant also sent Plaintiff text messages in an effort to collect the subject debt.

35. All of Defendant's collection calls were placed from the phone number (801) 689-3100.

36. On June 24, 2021, frustrated with the incessant calls and text message from Defendant, Plaintiff sent another cease-and-desist letter.

37. Plaintiff's second letter fell on blind eyes and Defendant continued to place erroneous prerecorded calls to Plaintiff's cellular phone.

38. To date, Plaintiff has received over 100 prerecorded phone calls and voicemails from Defendant ("robocalls") after she initially requested that Defendant cease contact with her in September 2020.

39. Defendant's incessant robocalls have invaded Plaintiff's privacy and have caused Plaintiff actual harm, including but not limited to, aggravation that accompanies unsolicited robocalls, increased risk of personal injury resulting from the distraction caused by the robocalls, wear and tear to Plaintiff's cellular phone, 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.

40. Moreover, each time Defendant placed a robocall to Plaintiff's cellular phone, 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.

41. Due to Defendant's refusal to honor Plaintiff's requests that it cease contact with her, Plaintiff was forced to retain counsel and file this action to compel Defendant to cease its invasive practices.

CLASS ALLEGATIONS

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

43. 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 United States (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) within the four years preceding the date of this Complaint through the date of class certification.

44. 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 its 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

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

46. 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.

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

48. 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

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

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

C. Typicality

51. 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

52. 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.

53. 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.

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

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

E. Adequate Representation

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

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

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

CLAIMS FOR RELIEF

COUNT I:

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

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

60. Defendant violated § 227 (b)(1)(A)(iii) of the TCPA by placing no less than one-hundred (100) non-emergency robocalls to Plaintiff's cellular telephone utilizing an artificial or prerecorded voice without Plaintiff's consent.

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

62. As pled above, Defendant did not have consent to place robocalls to Plaintiff's cellular phone as Plaintiff requested that Defendant cease *all* contact with her on multiple occasions (in writing).

63. Upon information and belief, Defendant does not maintain adequate policies and procedures to ensure compliance with the TCPA.

64. Upon information and belief, Defendant knew its collection practices were in violation of the TCPA yet continued to employ them to maximize efficiency and profits at the expense of Plaintiff and the Putative Class.

65. As pled above, Plaintiff was harmed by Defendant's unlawful collection calls.

WHEREFORE, Plaintiff, DIAMOND B. COLLINS, 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 judgment in her favor finding that Defendant violated 47 U.S.C. § 227 (b)(1)(A)(iii);
- c. an order enjoining Defendant from placing further unlawful calls to Plaintiff and the members of the Putative Class;
- d. an award of \$500.00 in damages to Plaintiff and the members of the Putative Class for each such violation;
- e. an award of treble damages up to \$1,500.00 to Plaintiff and the members of the Putative Class for each such violation; and
- f. 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 12, 2021

Respectfully submitted,

DIAMOND B. COLLINS

By: /s/ Mohammed O. Badwan

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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
DIAMOND B. COLLINS, individually, and on behalf of all others similarly situated
(b) County of Residence of First Listed Plaintiff Cumberland (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
HAWX, LLC d/b/a HAWX PEST CONTROL, LLC
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: PTF, DEF, 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)

Table with 5 main columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Each cell contains a list of legal categories with checkboxes.

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

VI. CAUSE OF ACTION (Enter U.S. Civil Statute under which you are filing and write a brief statement of cause.)
Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227 et seq.

VII. Previous Bankruptcy Matters (For nature of suit 422 and 423, enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this Court. Use a separate attachment if necessary.)

VIII. 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

IX. RELATED CASE(S) IF ANY (See instructions): JUDGE DOCKET NUMBER
X. This case (check one box) Is not a refiling of a previously dismissed action is a refiling of case number previously dismissed by Judge

DATE 10/12/2021 SIGNATURE OF ATTORNEY OF RECORD s:/ Mohammed O. Badwan

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 six 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. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

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. Previous Bankruptcy Matters For nature of suit 422 and 423 enter the case number and judge for any associated bankruptcy matter previously adjudicated by a judge of this court. Use a separate attachment if necessary.

VIII. 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.

IX. 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.

X. Refiling Information. Place an "X" in one of the two boxes indicating if the case is or is not a refiling of a previously dismissed action. If it is a refiling of a previously dismissed action, insert the case number and judge.

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: [Hawx Pest Control Hit with Class Action Over Alleged Collection Calls](#)
