

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

ANTONYA V. WILLIAMS, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

FULCRUM RETAIL ENERGY, LLC d/b/a
AMIGO ENERGY,

Defendant.

CLASS ACTION COMPLAINT

CASE NO. 3:22-cv-00460

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

NOW comes ANTONYA V. WILLIAMS (“Plaintiff”), by and through the undersigned, on behalf of himself and all others similarly situated, complaining as to the conduct of FULCRUM RETAIL ENERGY, LLC d/b/a AMIGO ENERGY (“Defendant”), as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action on behalf of herself and numerous other similarly situated individuals against Defendant pursuant to the Telephone Consumer Protection Act (“TCPA”) under 47 U.S.C. §227 *et seq.*, and the Texas Debt Collection Act (“TDCA”) under Tex. Fin. Code § 392.001 *et seq.*, for Defendant’s unlawful conduct.

JURISDICTION AND VENUE

2. This action arises under and is brought pursuant to the TCPA. Subject matter jurisdiction is conferred upon this Court by 47 U.S.C §227, 28 U.S.C. §§1331 and 1337, as the action arises under the laws of the United States. Supplemental jurisdiction exists for Plaintiff’s state law claims pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as Defendant conducts business in the Northern District of Texas and a substantial portion the events or omissions giving rise to the claims occurred within the Northern District of Texas.

PARTIES

4. Plaintiff is a natural person over 18 years-of-age residing in Dallas, Texas, which lies within the Northern District of Texas.

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

6. Defendant is an energy company that provides services to consumers throughout the state of Texas, and in connection therewith, routinely attempts to collect debts owed to it in connection with the services it provides consumers. Defendant is a limited liability company organized under the laws of the state of Texas whose agent for service of process is located at 211 East 7th Street, Suite 620, Austin, Texas.

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

8. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives and insurers at all times relevant to the instant action.

FACTS SUPPORTING CAUSES OF ACTION

9. Beginning in approximately mid-November 2021, Plaintiff began receiving calls from Defendant to her cellular phone, (214) XXX-0209.

10. At all times relevant to the instant action, Plaintiff was the sole subscriber, owner, and operator of the cellular phone ending in -0209. Plaintiff is and has always been financially responsible for the cellular phone and its services.

11. Defendant has primarily used the phone number (281) 247-0966 when placing calls to Plaintiff's cellular phone, but upon belief, it has used other numbers as well.

12. Upon information and belief, the above-referenced phone number is regularly utilized by Defendant in connection with its communications with consumers, including its efforts to collect debts from consumers.

13. On unanswered calls from Defendant, Plaintiff is left pre-recorded voicemail messages asking for a return call.

14. These voicemail messages came from Defendant and request that Plaintiff call back the number (866) 527-7179.

15. Upon speaking with Defendant, Plaintiff was informed that Defendant was calling seeking to collect upon past due payments said to be owed by an individual named "Pedro."

16. Plaintiff never had services with Defendant, does not know this individual named Pedro, and informed Defendant that it had the wrong number, she was not the party it was seeking, and further demanded that Defendant stop contacting her cellular phone.

17. Defendant apologized and advised that Claimant's phone number would be removed from its list.

18. However, notwithstanding Defendant's acknowledgement and representation that the calls would cease, Plaintiff continued to be subjected to repeated and continuous telephone calls from Defendant.

19. Since the calls began, Defendant frequently placed upwards of 3 phone calls per day to Plaintiff's cellular phone, leaving pre-recorded or artificial voicemail messages with each call.

20. Plaintiff has reiterated her information and demands that Defendant's phone calls cease on multiple occasions, and Defendant has acknowledged its error on a number of occasions, yet Defendant has persisted in bombarding Plaintiff with unnecessary and unwanted collection efforts.

21. Defendant's multiple daily calls have also often been placed in short succession.

22. In total, Plaintiff has received well over 100 phone calls to her cellular phone from Defendant despite having no business relationship with Defendant and despite repeatedly informing Defendant that they were calling the wrong person and their contacts needed to stop.

23. Plaintiff has suffered significant distress and aggravation as a result of Defendant's conduct in bombarding Plaintiff with unnecessary and unconsented-to automated messages.

24. Plaintiff has suffered concrete harm as a result of Defendant's actions, including but not limited to, invasion of privacy, aggravation that accompanies unconsented-to telephone calls, emotional distress, aggravation, frustration, increased risk of personal injury resulting from the distraction caused by the never-ending calls, increased usage of her telephone services, and diminished space for data storage on her cellular phone.

25. Upon information and belief, Defendant's conduct directed towards Plaintiff is indicative of a pattern and practice wherein Defendant contacts consumers with which it shares no preexisting business relationship, and continues calling such consumers even after such consumers have requested that no further calls occur.

26. All of Defendant's phone calls to Plaintiff's cellular phone number subject to this action occurred within the four years preceding the date of the filing of the Complaint in this matter.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of himself and others similarly situated against Defendant for its violations of the TCPA and TDCA.

28. Plaintiff brings this action against Defendant, both on her own behalf and as a class action on behalf of the following Class:

All persons residing in the State of Texas to whom Defendant placed collection calls, to such persons' cellular phones, using prerecorded or artificial voice messages, absent prior express consent, within four years preceding the filing of this Complaint through the date of class certification.

29. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(a).

30. Upon information and belief, the Class outlined above consists of hundreds or more persons throughout the State of Texas such that joinder of the respective Class members is impracticable.

31. There are questions of law and fact that are common to the respective Class members that relate to Defendant's violations of the TCPA and TDCA, particularly because the questions of law and fact are based on a common course of conduct by Defendant as it relates to the respective Class members.

32. Plaintiff and the members of the Class were harmed by the acts of Defendant in, *inter alia*, the following ways: Defendant illegally contacted Plaintiff and putative Class members via their cellular phones thereby causing Plaintiff and the respective Class members to incur certain charges or reduced telephone time by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.

33. The claims of Plaintiff are typical of the claims of the proposed Class because they are based on the same legal theories and course of conduct, and Plaintiff has no interests that are antagonistic to the interests of the respective Class members.

34. Plaintiff is an adequate representative of the Class and has retained competent legal counsel experienced in class actions and complex litigation.

35. The questions of law and fact common to the Class predominate over any questions affecting only individual Class members, particularly because the focus of the litigation will be on the conduct of Defendant. The predominant questions of law and fact as they relate to the Class include, but are not limited to: (i) whether Defendant utilized prerecorded or artificial voice technology when calling Plaintiff and putative Class members; (ii) whether Defendant had the requisite prior express consent to contact Plaintiff and putative Class members using prerecorded or artificial voice messages; (iii) whether Defendant violated the TCPA and TDCA by placing unconsented calls to Plaintiff's and putative Class members' cellular phones using prerecorded or artificial voice technology; and (iv) the type and amount of relief to which the Plaintiff and Class members are entitled.

36. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, as the pursuit of hundreds of individual lawsuits would cause a strain on judicial resources and could result in inconsistent or varying adjudications, yet each respective Class member would be required to prove an identical set of facts in order to recover damages.

COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

37. Plaintiff repeats and realleges paragraphs 1 through 36 as though fully set forth herein.

38. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling persons on their cellular phone using prerecorded or artificial voice messages without their consent.

39. Defendant's use of prerecorded messages in its contacts made towards Plaintiff and the Class underscores that its conduct in relation to such Class is within the ambit of the TCPA.

40. Defendant violated the TCPA by placing repeated and persistent phone calls using prerecorded messages to Plaintiff's and the Class members' cellular phones absent prior express consent. Plaintiff never consented to receiving any calls from Defendant as she had no previous relationship with Defendant. As such, Plaintiff and the Class class members never consented to receiving phone calls from Defendant, and similarly revoked any consent that Defendant may have had for its calls, which illustrates the extent to which Defendant's contact efforts with Plaintiff and the Class members were made absent the requisite prior express consent for such calls.

41. The calls placed by Defendant to Plaintiff and the Class members were regarding business activity and were not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

42. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is liable to Plaintiff and the respective Class members for at least \$500.00 per call. Moreover, Defendant's willful and knowing violations of the TCPA should trigger this Honorable Court's ability to triple the damages to which Plaintiff and the respective Class members are otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

WHEREFORE, Plaintiff, ANTONYA V. WILLIAMS, respectfully requests that this Honorable Court grant the following:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Certification of the Class requested above and appointment of the Plaintiff as Class Representative and of her counsel as Class Counsel;
- c. Awarding damages of at least \$500.00 per phone call and treble damages pursuant to 47 U.S.C. §§ 227(b)(3)(B)&(C);
- d. Awarding Plaintiff costs and reasonable attorney fees;
- e. Enjoining Defendant from further contacting Plaintiff; and

f. Awarding any other relief as this Honorable Court deems just and appropriate.

COUNT II – VIOLATIONS OF THE TEXAS DEBT COLLECTION ACT

43. Plaintiff restates and realleges paragraphs 1 through 42 as though fully set forth herein.

44. Plaintiff is a “person” as contemplated by Tex. Fin. Code Ann. § 392.403(a).

45. Defendant is a “debt collector” as defined by Tex. Fin. Code Ann. § 392.001(6).

46. The subject debt is a “consumer debt” as defined by Tex. Fin. Code Ann. § 392.001(2) as it is an obligation, or alleged obligation, arising from a transaction for personal, family, or household purposes. Due to the nature of Defendant’s business in providing residential energy services to consumers throughout Texas, the debt which it sought to collect from Plaintiff was likely personal in nature by whomever incurred it.

a. Violations of TDCA § 392.302

47. The TDCA, pursuant to Tex. Fin. Code § 392.302(4), provides that “in debt collection, a debt collector may not oppress, harass, or abuse a person by: 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.”

48. Defendant violated § 392.304(4) of the TDCA through its contacts directed towards Plaintiff’s cellular phone. Despite Plaintiff having no connection to the subject debt and never consenting to Defendant’s calls, Defendant repeatedly and consistently contacted Plaintiff seeking to collect upon a debt owed by an individual with whom Plaintiff was completely unfamiliar. The fact Defendant placed such voluminous and consistent phone calls to an innocent consumer who had made several requests that the calls stop underscore the harassing intent behind Defendant’s conduct.

b. Violations of TDCA § 392.304

49. The TDCA, pursuant to Tex. Fin. Code Ann. § 392.304(8), prohibits a debt collector from “misrepresenting the character, extent, or amount of a consumer debt . . .” The TDCA, under Tex. Fin. Code Ann. § 392.304(19), further prohibits a debt collector from “using any other false representation or deceptive means to collect a debt”

50. Defendant violated the above referenced provisions of the TDCA through its repeated and continuous attempts to collect a debt from Plaintiff which she did not owe. Defendant’s repeated phone calls suggested to Plaintiff that, despite her lack of obligation on the subject debt, Defendant still believed her to owe it and would continue to attempt to collect. As such, Defendant misrepresented the character of the subject debt as being properly collectible from Plaintiff. Such representations are inherently false given Plaintiff’s complete lack of any sort of obligation owed to Defendant.

51. Further, Defendant violated the § 392.304(19) of the TDCA when it unlawfully left automated voice message for Plaintiff despite her never consenting to such communications. Defendant deceptively and misleadingly represented its lawful ability to engage in its communications, when in fact such communications were inherently unlawful and in violation of vital consumer protection statutes.

WHEREFORE, Plaintiff, ANTONYA V. WILLIAMS, respectfully requests that this Honorable Court enter judgment in her favor as follows:

- a. Declaring that the practices complained of herein are unlawful and violate the aforementioned statutes and regulations;
- b. Certification of the Class requested above and appointment of the Plaintiff as Class Representative and of her counsel as Class Counsel;
- c. Award Plaintiff to injunctive relief pursuant to Tex. Fin. Code Ann. § 392.403(a)(1).
- d. Award Plaintiff actual damages, pursuant to Tex. Fin. Code Ann. § 392.403(a)(2).

- e. Award Plaintiff punitive damages, in an amount to be determined at trial, for the underlying violations;
- f. Awarding Plaintiff costs and reasonable attorney fees, pursuant to Tex. Fin. Code Ann. § 392.403(b); and,
- g. Awarding any other relief as this Honorable Court deems just and appropriate.

Dated: February 25, 2022

Respectfully submitted,

s/ Nathan C. Volheim

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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

ANTONYA V. WILLIAMS, on behalf of herself and all others similarly situated

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

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

DEFENDANTS

FULCRUM RETAIL ENERGY, LLC d/b/a AMIGO ENERGY

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)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, 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)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, Labor, etc.

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, 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") under 47 U.S.C. §227 et seq. Brief description of cause: Unlawful 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 2/25/2022 SIGNATURE OF ATTORNEY OF RECORD s/ Nathan C. Volheim

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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.
 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 cases, if any. If a related case exists, whether pending or closed, insert the docket numbers and the corresponding judge names for such cases. A case is related to this filing if the case: 1) involves some or all of the same parties and is based on the same or similar claim; 2) involves the same property, transaction, or event; 3) involves substantially similar issues of law and fact; and/or 4) involves the same estate in a bankruptcy appeal.

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: [Amigo Energy Hit with Class Action in Texas Over Alleged Debt Collection Robocalls](#)
