

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

STEVEN L. MARKOS, on behalf of
himself and all others similarly situated,

Plaintiff,

v.

WELLS FARGO BANK, N.A.,

Defendant

No. 1:15cv1156

ANSWER TO COMPLAINT

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

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

JURISDICTION AND VENUE

2. Plaintiff's allegations in Paragraph 2 of the Complaint regarding jurisdiction call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

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

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

PARTIES

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

6. Plaintiff's allegations in Paragraph 6 regarding his status as a subscriber call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

7. Wells Fargo admits that it is a national association which, as of the first quarter of 2015, maintained approximately \$1.7 trillion in assets and, as of the date of this Answer, had a stock market value of approximately \$289 billion.

8. Wells Fargo admits that it is headquartered with its corporate offices at 420 Montgomery Street, San Francisco, CA 94104.

9. Wells Fargo admits that it maintains an office in Iowa from which calls are made. Plaintiff's allegations regarding the existence of and membership in the purported class call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo denies that a class can be properly certified in this case.

10. The allegations in Paragraph 10 of the Complaint characterize documents that speak for themselves and, therefore, no response is required. To the extent the allegations differ from the documents, they are denied.

11. Wells Fargo admits that it has multiple banking locations in the Atlanta area.

12. The allegations in Paragraph 12 of the Complaint are not allegations of fact and, therefore, no response is required. To the extent a response is required, the allegations are denied.

13. The allegations in Paragraph 13 of the Complaint call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

FACTUAL ALLEGATIONS

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

15. Wells Fargo denies the allegations in Paragraph 15 of the Complaint.

16. The allegations in Paragraph 16 of the Complaint call for legal conclusions as to the meaning of unattended and pre-recorded voice mail messages under the TCPA and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. By way of further response, Wells Fargo admits that it has previously left recorded messages for Plaintiff.

17. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 17 and, therefore, denies the same.

18. Wells Fargo lacks sufficient information to admit or deny the allegations in Paragraph 18 and, therefore, denies the same.

19. Wells Fargo admits that in the past it has used equipment from Sun Microsystems in connection with the dialing of customers. Wells Fargo denies Plaintiff's remaining allegations in Paragraph 19 to the extent they are inconsistent with Wells Fargo's admission.

20. The allegations in Paragraph 20 of the Complaint call for legal conclusions regarding the capacity to predictively dial and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

21. The allegations in Paragraph 21 of the Complaint call for legal conclusions regarding the capacity to store a database of telephone numbers and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

22. The allegations in Paragraph 22 of the Complaint call for legal conclusions regarding the capacity to dial telephone numbers from a stored list either at random or in some sequence and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

23. Wells Fargo lacks sufficient information as to the calls to which Plaintiff is referring in Paragraph 23 and, therefore, lacks sufficient information to admit or deny the allegations in Paragraph 23. Wells Fargo, therefore, denies the same.

24. The allegations in Paragraph 24 of the Complaint call for legal conclusions regarding the capacity to dial from a list of telephone numbers without human intervention and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

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

26. Wells Fargo denies the allegations in Paragraph 26 of the Complaint.

27. Wells Fargo denies the allegations in Paragraph 27 of the Complaint.

28. Wells Fargo denies the allegations in Paragraph 28 of the Complaint.

29. Wells Fargo denies the allegations in Paragraph 29 of the Complaint.

30. Wells Fargo denies the allegations in Paragraph 30 of the Complaint.

31. Wells Fargo denies the allegations in Paragraph 31 of the Complaint.

32. Wells Fargo denies the allegations in Paragraph 32 of the Complaint.

33. Wells Fargo denies the allegations in Paragraph 33 of the Complaint.

34. Wells Fargo admits that it is aware of the TCPA. Plaintiff's allegations regarding autodialed calls in Paragraph 34 call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary

to law, they are denied. Wells Fargo denies the remaining allegations in Paragraph 34 and denies that it violated the TCPA.

35. The allegations in Paragraph 35 of the Complaint call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

36. The allegations in Paragraph 36 of the Complaint call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied.

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

38. The allegations in Paragraph 38 of the Complaint call for legal conclusions and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. By way of further response, Wells Fargo denies that it has violated the TCPA in any way.

39. Wells Fargo denies the allegations in Paragraph 39 of the Complaint.

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

CLASS ACTION ALLEGATION

41. The allegations in Paragraph 41 are not allegations of fact and, therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action.

42. The allegations in Paragraph 42 are not allegations of fact and, therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action and denies that it violated the TCPA.

43. The allegations in Paragraph 43 are not allegations of fact and, therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action and denies that it violated the TCPA.

44. The allegations in Paragraph 44 are not allegations of fact but, rather, allegations regarding Plaintiff's counsel's intentions with respect to the purported class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action and denies that it violated the TCPA.

45. The allegations in Paragraph 45 call for legal conclusions regarding ascertainability of the purported class and, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

46. The allegations in Paragraph 46 call for legal conclusions regarding numerosity and, therefore, no response is required. To the extent the allegations

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

47. Wells Fargo denies the allegations in Paragraph 47 of the Complaint.

48. The allegations in Paragraph 48 call for legal conclusions regarding commonality and predominance, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

49. The allegations in Paragraph 49 call for legal conclusions regarding typicality, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

50. The allegations in Paragraph 50 call for legal conclusions regarding adequacy, therefore, no response is required. To the extent the allegations are contrary to law, they are denied. Wells Fargo further denies that this lawsuit can be certified as a class action.

51. Wells Fargo denies the allegations in Paragraph 51 of the Complaint.

52. Wells Fargo denies the allegations in Paragraph 52 of the Complaint.

53. The allegations in Paragraph 53 are not allegations of fact but, rather, allegations regarding Plaintiff's counsel's intentions with respect to the purported

class. Therefore, no response is required. To the extent a response is required, Wells Fargo denies that this lawsuit can be certified as a class action.

COUNT ONE: TELEPHONE CONSUMER PROTECTION ACT

54. Wells Fargo denies the allegations in Paragraph 54 of the Complaint.

55. Wells Fargo denies the allegations in Paragraph 55 of the Complaint.

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

57. Wells Fargo denies the allegations in Paragraph 57 of the Complaint.

58. Wells Fargo denies the allegations in Paragraph 58 of the Complaint regarding any entitlement to treble damages.

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

60. Wells Fargo denies the allegations in the WHEREFORE paragraph immediately following paragraph 59 of the Complaint. Specifically, Wells Fargo denies that this lawsuit should be certified as a class action, denies that Wells Fargo is liable for any damages whatsoever, denies that Plaintiff is entitled to any injunctive relief, denies that Wells Fargo violated the TCPA, and denies the Plaintiff is entitled to any costs or any further relief.

AFFIRMATIVE AND OTHER DEFENSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

conduct, negligence, acts, or omissions of third parties beyond the control of Wells Fargo.

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

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

Respectfully submitted this 5th day of June, 2015

/s/ Stephen Riddell
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CERTIFICATE OF SERVICE

I hereby certifies that on this 5th day of June, 2015 I filed the foregoing Answer to Plaintiff's Complaint with the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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