

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

CASE NO. 9:17-CV-80393-RLR

CHARLES T. JOHNSON,
on behalf of himself and others
similarly situated,

Plaintiffs,

v.

NPAS SOLUTIONS, LLC,

Defendant.

**DEFENDANT NPAS SOLUTIONS, LLC'S ANSWER, DEFENSES AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S AMENDED CLASS ACTION COMPLAINT**

Defendant NPAS Solutions, LLC ("Defendant") hereby submits its Answer, Defenses and Affirmative Defenses to Plaintiff Charles T. Johnson's Amended Complaint (the "Amended Complaint") as follows:¹

1. Paragraph 1 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 1 and demands strict proof thereof.

2. Paragraph 2 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 2 and demands strict proof thereof.

¹ Unless otherwise specifically admitted, Defendant denies each and every allegation of the Amended Complaint and demands strict proof thereof.

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3. Paragraph 3 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 3 and demands strict proof thereof.

4. Paragraph 4 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 4 and demands strict proof thereof.

5. Paragraph 5 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 5 and demands strict proof thereof.

6. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 6, and therefore denies these allegations and demands strict proof thereof.

7. Defendant admits the allegations in paragraph 7.

8. Defendant denies the allegations in paragraph 8 and demands strict proof thereof.

9. Defendant admits the allegations in paragraph 9.

10. Defendant is unable to open the URL in footnote 3 and therefore lacks sufficient knowledge or information to admit or deny the accuracy of the quoted language. Defendant admits that it operates a call center in Kentucky and that its collection specialists contact patients in order to negotiate payment arrangements. Defendant is without knowledge or information sufficient to admit or deny the allegations regarding “skip tracing techniques” because the phrase “skip tracing techniques” is vague, ambiguous, and subject to more than one interpretation and is not defined in the Amended Complaint, and therefore denies these allegations and demands strict proof thereof.

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11. Defendant admits that it operates a call center in Kentucky but otherwise denies the allegations in paragraph 11 and demands strict proof thereof.

12. Defendant states that the allegations contained in paragraph 12 quote from the website of Parallon Business Solutions LLC, refers the Court to the full contents of that website, and denies any allegations inconsistent therewith.

13. Defendant admits that it placed calls to the telephone number (561) 619-XXXX; denies that the calls were intended to contact a third party named “Stephanie;” and is without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 13 and therefore denies these allegations and demands strict proof thereof.

14. Defendant admits that it placed calls to the telephone number (561) 619-XXXX on February 27, 2017, March 3, 2017, March 7, 2017, and March 13, 2017, but is otherwise without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 14 and therefore denies these allegations and demands strict proof thereof.

15. Paragraph 15 asserts legal conclusions regarding “an automatic telephone dialing system or an artificial or prerecorded voice” to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies these allegations and demands strict proof thereof. Defendant admits that it made certain calls to the telephone number (561) 619-XXXX, but is otherwise without sufficient knowledge or information to admit or deny the remaining allegations in paragraph 15 and therefore denies these allegations and demands strict proof thereof.

16. Defendant admits that it makes calls from the telephone number (866) 258-1104, but is without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 16 and therefore denies these allegations and demands strict proof thereof.

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17. Defendant denies the allegations in paragraph 17 and demands strict proof thereof.

18. Defendant denies the allegations in paragraph 18 and demands strict proof thereof.

19. Defendant denies the allegations in paragraph 19 and demands strict proof thereof.

20. Defendant denies the allegations in paragraph 20 and demands strict proof thereof.

21. Defendant denies the allegations in paragraph 21 and demands strict proof thereof. Defendant states that the only date on which Plaintiff spoke with one of Defendant's representatives on telephone number (561) 619-XXXX was March 13, 2017, when Plaintiff called Defendant. Said conversation was recorded; Defendant refers the Court to the transcript of said conversation and denies any allegations inconsistent therewith. Defendant further states that Plaintiff inexplicably called Defendant back approximately one minute after first call from Plaintiff and refers the Court to the transcript of said conversation.

22. Defendant denies the allegations in paragraph 22 and demands strict proof thereof. Defendant states that Plaintiff's two calls to Defendant on March 13, 2017 were recorded, refers the Court to the transcript of said calls, and denies any allegations inconsistent therewith. Defendant further states that after Plaintiff's calls to Defendant on March 13, 2017, Defendant has not called telephone number (561) 619-XXXX again.

23. Paragraph 23 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 23 and demands strict proof thereof.

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24. Paragraph 24 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 24 and demands strict proof thereof.

25. Paragraph 25 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 25 and demands strict proof thereof.

26. Defendant admits that it makes certain automated calls, but otherwise denies the allegations in paragraph 26 and demands strict proof thereof.

27. Defendant denies the allegations in paragraph 27 and demands strict proof thereof.

28. Paragraph 28 asserts a legal conclusion regarding “prior express consent” to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies these allegations and demands strict proof thereof. To the extent that paragraph 28 makes factual allegations, Defendant is without information sufficient to admit or deny the remaining allegations in paragraph 28 and therefore denies these allegations and demands strict proof thereof. Defendant further asserts that statements made by Plaintiff during the calls at issue, including a reference by Plaintiff to his “account number,” suggest that Plaintiff consented to being called by Defendant.

29. Defendant denies the allegations in paragraph 29 and demands strict proof thereof.

30. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 30 and therefore denies these allegations and demands strict proof thereof.

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31. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 31 and therefore denies these allegations and demands strict proof thereof.

32. Defendant admits that it did not make any calls to the telephone number (561) 619-XXXX for emergency purposes. Defendant is otherwise without knowledge or information sufficient to admit or deny the remaining allegations in paragraph 32 and demands strict proof thereof.

33. Paragraph 33 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 33 and demands strict proof thereof.

34. Paragraph 34 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 34 and demands strict proof thereof.

35. Paragraph 35 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 35 and demands strict proof thereof.

36. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 36 and therefore denies these allegations and demands strict proof thereof.

37. Defendant is without knowledge or information sufficient to admit or deny the allegations in paragraph 37 and therefore denies these allegations and demands strict proof thereof.

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38. Paragraph 38 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 38 and demands strict proof thereof.

39. Paragraph 39 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 39 and demands strict proof thereof.

40. Paragraph 40 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 40 and demands strict proof thereof.

41. Paragraph 41 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 41 and demands strict proof thereof.

42. Paragraph 42 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 42 and demands strict proof thereof.

43. Paragraph 43 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 43 and demands strict proof thereof.

44. Paragraph 44 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 44 and demands strict proof thereof.

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45. Paragraph 45 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 45 and demands strict proof thereof.

46. Paragraph 46 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 46 and demands strict proof thereof.

47. Paragraph 47 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 47 and demands strict proof thereof.

48. Paragraph 48 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 48 and demands strict proof thereof.

49. Paragraph 49 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 49 and demands strict proof thereof.

50. Paragraph 50 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 50 and demands strict proof thereof.

51. Paragraph 51(a)-(e) asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 51 and demands strict proof thereof.

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52. Paragraph 52 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 52 and demands strict proof thereof.

COUNT I: VIOLATIONS OF 47 U.S.C. § 227(b)(1)(A)(iii)

53. Defendant repeats and reasserts its responses to paragraphs 1-52 as though fully set forth herein.

54. Paragraph 54 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 54 and demands strict proof thereof.

55. Paragraph 55 asserts legal conclusions to which no response is required; in an abundance of caution, to the extent a response is necessary, Defendant denies the allegations of paragraph 55 and demands strict proof thereof.

WHEREFORE, Defendant denies that Plaintiff is entitled to judgment in his favor for any of the relief requested on page 9 of the Amended Complaint and demands strict proof thereof.

DEFENSES AND AFFIRMATIVE DEFENSES

Without assuming the burden of proof or persuasion where such burden is on Plaintiff, Defendant asserts the following defenses and affirmative defenses to Plaintiff's Amended Complaint.

56. The Amended Complaint fails to state a claim upon which relief can be granted against Defendant under the Telephone Consumer Protection Act ("TCPA"). Without limitation, the Amended Complaint states mere legal conclusions without sufficient factual support and the very records upon which Plaintiff relies refute key aspects of Plaintiff's claim.

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57. Defendant acted at all times in compliance with the TCPA, acting in a reasonable manner, in good faith and without malice, willfulness, or intent to violate the TCPA or to injure Plaintiff or any putative class members.

58. Plaintiff's Amended Complaint is barred, in whole or in part, by the doctrines of waiver, estoppel, and/or unclean hands.

59. Plaintiff did not suffer any damages as a result of Defendant's alleged conduct (which Defendant specifically denies).

60. Plaintiff's alleged damages, which Defendant specifically denies, were the result of intervening and/or superseding causes, over which Defendant had no control.

61. The damages for which Plaintiff seeks to hold Defendant liable, if any and which Defendant specifically denies, were proximately caused by Plaintiff's own failure to use reasonable means to properly mitigate his damages.

62. Class treatment of Plaintiff's TCPA claim is inappropriate, unwarranted and should be denied pursuant to Federal Rule of Civil Procedure 23. Without limitation, Plaintiff's class allegations involve highly individualized issues, meaning that class-wide issues do not predominate and there is no ascertainable class; there are key legal issues that cannot be resolved on a class-wide basis; Plaintiff's claims are not typical of the claims of the purported class; Plaintiff is not an adequate representative; and a class action is not superior to other available methods for the fair and efficient adjudication of this controversy.

RESERVATION OF RIGHTS

Defendant presently has insufficient knowledge or information as to whether it may have additional, and as of yet unstated, defenses and affirmative defenses available with respect to Plaintiff's Amended Complaint. Defendant hereby specifically reserves, and does not waive, the

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right to amend its defenses and affirmative defenses and/or assert additional defenses, affirmative defenses, counterclaims, third party claims and/or other claims, as the facts and circumstances may warrant and in the event discovery indicates that they would be appropriate.

PRAYER FOR RELIEF

WHEREFORE, Defendant NPAS Solutions, LLC respectfully requests that the Court dismiss Plaintiff's Amended Complaint in its entirety with prejudice and award Defendant court costs and all such other and further relief as the Court deems just and proper.

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 13, 2017, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified below in the Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

By: /s/Martin B. Goldberg
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