

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.:11-61797-CIV-ALTONAGA/Simonton

BLAISE PICCHI, an individual, and  
KATHLEEN ABOUREZK, an individual,  
on behalf of themselves and all others similarly  
situated,

Plaintiffs,

vs.

**COMPLAINT - CLASS ACTION**

WORLD FINANCIAL NETWORK  
NATIONAL BANK, N.A., a national  
banking association, and ALLIANCE  
DATA SYSTEMS CORP., a Delaware  
corporation,

Defendants.

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**AMENDED COMPLAINT FOR DAMAGES AND INCIDENTAL RELIEF**

Plaintiffs, Blaise Picchi, an individual, and Kathleen Abourezk, an individual, sue  
Defendants, World Financial Network National Bank, N.A., a national banking association, and  
Alliance Data Systems Corp., a Delaware corporation, and allege:

**JURISDICTION**

1. This is an action for violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. §227, which provides for a private cause of action for violations of the TCPA and regulations promulgated thereunder by the Federal Communications Commission ("FCC"), 47 C.F.R., Part 64, Subparts 1200 and 1601.
2. This Court has diversity jurisdiction under 28 U.S.C. §1332. In particular, the

citizenship of the parties are diverse, with Plaintiffs citizens of the State of Florida and the State of Michigan, respectively, and Defendant a citizen of the State of Ohio. As detailed below, Plaintiffs have alleged in excess of fifty (50) violations of the TCPA which provides for damages of up to One Thousand Five Hundred Dollars (\$1,500.00) per violation. Accordingly, the amount in controversy is in excess of Seventy Five Thousand Dollars (\$75,000.00), and exceeds the threshold amount required to establish diversity jurisdiction.

3. This Court has jurisdiction of this action pursuant to the Class Action Fairness Act, 20 U.S.C. §§1332(d) and 1453. In particular, the claims of the individual class members are aggregated for an amount in controversy exceeding the sum or value of Five Million Dollars (\$5,000,000.00), exclusive of interest and costs.

**ALLEGATIONS AS TO PARTIES**

4. At all times material hereto, Plaintiff, Blaise Picchi (“Mr. Picchi”), was a citizen of the State of Florida with his principal residence in Broward County, Florida.

5. At all times material hereto, Plaintiff, Kathleen Abourezk (“Ms. Abourezk”), was a citizen of the State of Michigan with her principal residence in Oakland County.

6. At all times material hereto, Defendant, World Financial Network National Bank, N.A. (“WFNNB”) was a national bank with its principal and main office in the State of Ohio. Pursuant to the ruling of the United States Supreme Court in *Wachovia Bank v. Schmidt*, 546 U.S. 303, 126 S.Ct. 941 (2006), WFNNB is a citizen of the State of Ohio for purposes of diversity jurisdiction under 28 U.S.C. §1348.

7. At all times material hereto, WFNNB was a major issuer of private label consumer credit cards for *inter alia* retailers such as Ann Taylor, Victoria’s Secret, and

Abercrombie & Fitch.

8. At all times material hereto, Defendant, Alliance Data Systems Corp. (“Alliance”) is a subsidiary of WFNNB.

9. Alliance performs account servicing, billing and collections for credit cards issued by WFNNB.

10. Alliance and WFNNB operate as affiliates and joint adventurers concerning the collection of accounts issued by WFNNB. Alliance acts as WFNNB’s agent in the placement of the telephone calls at issue.

11. This complaint will refer to these Defendants collectively as “WFNNB.”

12. At all times material hereto, WFNNB routinely made collection and other calls to persons using automated dialing systems and pre-recorded messages.

***FACTUAL ALLEGATIONS***

***Factual Allegations as to Mr. Picchi***

13. Mr. Picchi is an attorney in South Florida.

14. He maintains cellular telephone service for his personal and professional convenience.

15. Mr. Picchi maintains service for that cellular phone via a “cellular telephone service” as described in 47 U.S.C. § 227(b)(1)(A)(iii).

16. At some unknown time in the past, WFNNB began to collect a credit card which it issued in the name of “Paul Rodriguez.”

17. WFNNB sought to collect that debt by placing telephone calls to the cellular phone of Mr. Picchi.

18. WFNNB began those calls to Mr. Picchi in or about August, 2010.

19. WFNNB used an autodialer to place those calls, and frequently placed those calls multiple times a day.

20. WFNNB used a prerecorded voice message in calls to Mr. Picchi's cellular phone.

21. Mr. Picchi does not have an "established business relationship" with WFNNB as that term is defined in 47 U.S.C. § 227(a)(2).

22. Mr. Picchi does not hold any credit cards owned or serviced by WFNNB.

23. Mr. Picchi does not owe any money to WFNNB.

24. Mr. Picchi never gave WFNNB his cellular phone number

25. Mr. Picchi never gave WFNNB consent to call his cellular phone.

26. After WFNNB began those calls, Mr. Picchi notified WFNNB that its calls for Paul Rodriguez were not reaching their intended recipients.

27. Mr. Picchi also notified WFNNB that he had no relationship with WFNNB or Paul Rodriguez.

28. Mr. Picchi wrote to WFNNB and demanded that it stop calling his cell phone.

29. Notwithstanding receipt of Mr. Picchi's verbal and written requests that the calls stop, WFNNB continued to place calls to Mr. Picchi using an automatic telephone dialing system.

**Allegations as to Calls to Ms. Abourezk**

30. Ms. Abourezk maintains a cellular telephone for her personal use in communicating with family, friends and conducting personal business.

31. Ms. Abourezk maintains service for that cellular phone via a "cellular telephone

service” as described in 47 U.S.C. § 227(b)(1)(A)(iii).

32. Ms. Abourezk carries this phone with her when she is at work and out of her home.

33. At some time in the past, WFNNB started collecting or commenced loan servicing or collection activities with respect to an unknown credit card in the name of a third party, Kristina House.

34. In March of 2011, WFNNB started calling Ms. Abourezk on her cell phone in order to collect the debt of Kristina House.

35. WFNNB used an automated telephone dialer to place those calls, and frequently placed those calls multiple times a day.

36. WFNNB used a prerecorded voice message in calls to Ms. Abourezk’s cellular phone.

37. Ms. Abourezk does not have an “established business relationship” with WFNNB as that term is defined in 47 U.S.C. § 227(a)(2).

38. Ms. Abourezk does not hold any credit cards owned or serviced by WFNNB

39. Ms. Abourezk does not owe any money to WFNNB.

40. Ms. Abourezk never gave WFNNB her cellular phone number

41. Ms. Abourezk never gave WFNNB consent to call her cellular phone.

42. After WFNNB began those calls, Ms. Abourezk notified WFNNB that its calls for Kristina House were not reaching their intended recipients.

43. Ms. Abourezk told WFNNB’s collection agents to stop calling her cell phone number on multiple occasions.

44. WFNNB refused to stop calling Ms. Abourezk on her cell phone.

45. WFNNB's collection agent told Ms. Abourezk that it would not remove her telephone number from its system unless Ms. House made the request in writing.

46. Ms. Abourezk filed a complaint with the Michigan Attorney General about the repeated and abusive calls made by WFNNB.

47. The complaint was forwarded to WFNNB by the Office of the Michigan Attorney General and WFNNB received the complaint.

48. Notwithstanding Ms. Abourezk's verbal request and the written complaint to the Michigan Attorney General, WFNNB has refused and refuses to stop calling the cellular phone of Ms. Abourezk using its automatic telephone dialing system.

**Common Allegations**

49. WFNNB has delegated most, if not all, of its credit card servicing operations to its subsidiary Alliance.

50. Alliance maintains collection operations around the Columbus Ohio area, as well as in India.

52. As part of its collection operations, WFNNB uses the Avaya Proactive Contacts automatic telephone dialing system manufactured by Avaya.

53. The automatic telephone dialing system used by Defendants – referred to throughout as an "autodialer" – is an "automatic telephone dialing system" as envisioned by 47 U.S.C. § 227.

54. WFNNB falls within the definition of a "person" as defined by 47 U.S.C. § 153(39).

55. WFNNB uses its Avaya autodialer and prerecorded messages to contact large numbers of persons for collection of delinquent accounts.

56. WFNNB places millions of calls per week to collect debts.

57. WFNNB does not use its automated dialer or prerecorded voice calls for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(I).

58. WFNNB regularly calls people who do not have accounts with WFNNB.

59. WFNNB regularly calls people who have not consented be called by WFNNB.

60. By WFNNB's own estimate, it removes approximately 48,000 telephone number per year which are coded as "wrong numbers" and which WFNNB has called using its automated dialing system.

61. The call rate for "wrong numbers" amounts to 3%-4% of WFNNB's outbound connected calls.

62. WFNNB has drafted a form letter to persons who are the unintended recipients of calls apologizing for the wrong calls, and has thus been able to identify those persons who have received such calls and are not actually WFNNB customers.

63. The FTC has received 2,570 consumer complaints under the TCPA category about WFNNB since 2006.

64. WFNNB's manager of its automated telephone dialing operation does not review the rate of wrong number calls with any supervisor for compliance with the TCPA.

65. Many of WFNNB's customers maintain more than one account with WFNNB.

66. WFNNB's autodialer and customer service representative have the capacity to identify those individuals with multiple accounts such that a person who has been wrongly

contacted concerning an account which is associated with a particular phone can be removed from WFNNB's calling database entirely. But, WFNNB will not completely disassociate a wrong number from a consumer in its autodialer database unless the recipient pleads for its removal. Even then, WFNNB's customer service personnel have no written instructions advising them to completely remove those unintended recipients of calls whose phones are associated with other accounts. Thus, wrongly targeted cell phones which are associated with particular customers of WFNNB may expect to receive many calls even after they have complained and written to WFNNB asking to have the calls stop.

67. As more particularly described above, WFNNB placed non-emergency telephone calls to Plaintiffs' and the class members' cellular telephones using an automatic telephone dialing system or pre-recorded or artificial voice without the prior express consent of Plaintiffs in violation of 47 U.S.C. §227(b)(1)(A)(iii).

68. There is no exception or justification for the numerous violations of the TCPA by WFNNB.

#### **CLASS ALLEGATIONS**

69. Mr. Picchi and Ms. Abourezk bring their individual claims and on behalf of themselves and a class of all other persons similarly situated, pursuant to Fed. R. Civ. P. 23.

70. Mr. Picchi and Ms. Abourezk propose to represent all persons within the United States who

- a. within the four years preceding the filing of this complaint,
- b. received a non-emergency telephone call from WFNNB,
- c. to a cellular telephone,



d. through the use of an automatic telephone dialing system or an artificial or prerecorded voice,

e. and who did not provide prior express consent for such calls during the transaction that resulted in the debt owed.

71. The class is so numerous as to make it impracticable to join all the disparate members of the class.

72. This complaint seeks monetary damages under Fed.R.Civ.P. 23(b)(3).

73. The class claims in this case present common questions of law and fact including whether:

a. WFNNB uses an autodialer to collect its debts from Mr.Picchi, Ms. Abourezk and the class members;

b. WFNNB uses that automatic telephone dialing system to call the cell phones of persons who have not consented to the calls.

c. WFNNB uses prerecorded voice messages in calls to Mr.Picchi, Ms. Abourezk and the class members;

d. WFNNB made nonemergency calls to Mr. Picchi, Ms. Abourezk and the class members' cellular telephones using an automatic telephone dialing system or an artificial or prerecorded voice;

e. WFNNB had the prior express consent to make calls to Mr. Picchi, Ms. Abourezk and the class members' cellular phones using an automated dialer or prerecorded voice;

f. WFNNB's conduct was knowing and/or willful;

74. These common questions predominate over any question affecting only individual

class members.

75. The claims of Mr. Picchi and Ms. Abourezk are typical of the claims of the class members.

76. Mr. Picchi and Ms. Abourezk base this action on their individual claims and assert claims on behalf of the class upon the same legal and remedial theories as their individual claims.

77. Mr. Picchi and Ms. Abourezk will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to the claims in this case.

78. Mr. Picchi and Ms. Abourezk have suffered similar injuries as the members of the classes that they seek to represent.

79. Mr. Picchi and Ms. Abourezk have retained counsel experienced in handling class action suits involving unfair business practices and consumer law.

80. Neither Mr. Picchi and Ms. Abourezk nor their counsel have any interest which might cause them not to vigorously pursue this action.

81. A class action is superior to other available methods for the fair and efficient adjudication of the controversy.

82. No individual class member could be expected to hold a strong interest in individually controlling the prosecution of separate claims against WFNNB, because the claim amounts are likely small and involve statutory damages under the TCPA.

83. Management of these claims will likely present few difficulties because the calls at issue are all automated and the class members, by definition, did not provide the prior express consent required under the statute to authorize calls to their cellular telephones.

**COUNT I - VIOLATION OF THE TCPA**

84. Plaintiffs reallege and reaffirms the allegations contained in Paragraphs 1 through 83 above as if set forth hereat in full.

85. Each call to the cellular phones of Plaintiffs and the class members is a separate violation and entitles Plaintiffs and the class members to statutory damages against WFNNB in the amount of at least Five Hundred Dollars (\$500.00) per call pursuant to 47 U.S.C. §227(b)(3).

86. WFNNB willfully and knowingly violated the TCPA and the regulations promulgated thereunder to the extent that the Court may, in its discretion, increase the amount of statutory damages to One Thousand Five Hundred Dollars (\$1,500.00) pursuant to 47 U.S.C. §227(b)(3).

WHEREFORE, Plaintiffs, Blaise Picchi and Kathleen Abourezk, individually and on behalf of all others similarly situated, request that this Court

- A. Certify this matter as a class action;
- B. Appoint the undersigned attorneys as class counsel;
- C. Authorize counsel to issue notice to the class members;
- D. Grant judgment for damages in the amount of \$500.00 per call to the class members, and
- E. Treble those damages for WFNNB's willful violations of the TCPA;
- F. Determine the attorney fees for counsel based on a common fund recovery; and
- G. Grant such other and further relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiffs, Blaise Picchi, an individual, and Kathleen Abourezk, an individual, pursuant to Rule 38, Federal Rules of Civil Procedure, demand a trial by jury of all issues so triable.

Respectfully Submitted,

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