

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF LOUISIANA**

**TERRANCE GUIDRY,**

**Plaintiff,**

**v.**

**PENN CREDIT CORPORATION,**

**Defendant.**

**CIVIL ACTION NO.:**

**6:19-cv-00997-MJJ-CBW**

**JUDGE: Michael J. Juneau**

**MAGISTRATE JUDGE:**

**Carol B. Whitehurst**

**ANSWER AND AFFIRMATIVE DEFENSES OF  
DEFENDANT, PENN CREDIT CORPORATION WITH JURY DEMAND**

NOW COMES, Defendant, Penn Credit Corporation, (“Defendant”), by and through its undersigned counsel, and hereby answers Plaintiff’s Complaint as follows:

1. Defendant admits the Plaintiff, individually and on behalf of others purportedly similarly situated, has sued the Defendant, and others, for alleged violations of the Telephone Consumer Protection Act (“TCPA”). Otherwise, denied.
2. Admitted for jurisdictional purposes only as Plaintiff has sought redress under a Federal Statute, namely the TCPA; otherwise, Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff’s Complaint.
3. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff’s Complaint.
4. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff’s Complaint.

5. Admitted Defendant is a corporation with its principal place of business as detailed in this paragraph of Plaintiff's Complaint that engages in the collection of accounts with its principal place of business in Pennsylvania; otherwise denied.
6. Admitted for jurisdictional purposes only.
7. Admitted the TCPA states what it states; otherwise denied.
8. Admitted the TCPA and case law cited herein state what they state; otherwise denied.
9. Admitted the TCPA and case law cited herein state what they state; otherwise denied.
10. Admitted the FCC and TCPA state what they state; otherwise denied.
11. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
12. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
13. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
14. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
15. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
16. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.
17. Denied.
18. Denied.
19. Denied.

20. Admitted.

21. Denied.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

28. Admitted Plaintiff filed the instant lawsuit; denied Plaintiff is entitled to any relief thereunder.

**CLASS ALLEGATIONS**

29. Admitted Plaintiff attempts to bring a putative class action as defined herein; denied Plaintiff is entitled such any and/or such relief.

30. Defendant is without sufficient information or knowledge to admit or deny the allegation contained in this paragraph of Plaintiff's Complaint.

31. Denied.

32. Denied.

33. Denied (a through l inclusive).

34. Denied.

35. Denied.

36. Denied.

37. Denied (a through i inclusive).

38. Denied.

**Count I**

39. Defendant re-incorporates and re-alleges the preceding as if fully set forth herein.

40. Denied that Defendant violated the TCPA as alleged by Plaintiff.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

**Count II**

45. Defendant re-incorporates and re-alleges the preceding as if fully set forth herein.

46. Denied that Defendant violated the TCPA as alleged by Plaintiff.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Any calls made by Defendant was made with the prior express of the Plaintiff(s).

**SECOND AFFIRMATIVE DEFENSE**

To the extent any violation of law is established, any such violations were not intentional and resulted from bona fide error, notwithstanding the maintenance of procedures reasonably adopted and implemented and specifically intended to avoid any such error. *See, In Jiminez v. Credit One Bank, N.A.*, No. 17 CV 2844-LTS-JLC, 2019 U.S. Dist. LEXIS 53096 (S.D.N.Y. Mar.

28, 2019); *Roark v. Credit One Bank, N.A.*, No. CV 16-173 (PAM/ECW), 2018 WL 5921652, at \*1 (D. Minn. Nov. 13, 2018).

### **THIRD AFFIRMATIVE DEFENSE**

Defendant asserts, without admitting any liability whatsoever, that Defendant did not violate the TCPA as it does not utilize an automated telephone system to place telephone calls to any third party.

### **FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's putative class action is unsuitable for class application as Plaintiff's putative class action is not the first filed putative class action aimed at Defendant. *See, Gurzi v. Penn Credit Corporation*, Case No 6:19-cv-00823 (MDFL filed 4/30/2019). The Fifth Circuit follows the "first-to-file rule." *See, American Bankers Life Assurance Co. of Fla. v. Overton*, 128 Fed.Appx. 399, 403 (5th Cir.2005). (When related cases are pending before two federal courts, the first-to-file rule instructs the court with the later-filed action to transfer it to the first-filed forum.)

### **JURY DEMAND**

Defendant hereby demands a trial by jury on all issues so triable.

Dated: August 23, 2019

Respectfully submitted,

By: /s/ Blake E. Oakes

BLAKE E. OAKES (30006)

The Oakes Law Firm, LLC

110 Veterans Boulevard, Suite 560

Metairie, LA 70005

Telephone: (504) 367-3479

Facsimile: (504) 367-9330

[blake@oakeslaw.com](mailto:blake@oakeslaw.com)

*Attorney for Defendant, Penn Credit Corp*

**CERTIFICATE OF SERVICE**

I do hereby certify that the foregoing document has been electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all attorneys of record, and a copy was served, via United States Mail, on the 23<sup>rd</sup> day of August, 2019, to the following:

Rene Fernandez Rocha  
Morgan & Morgan  
909 Poydras Street, Suite 1625  
New Orleans, Louisiana 70112  
Telephone: (305) 989-8688  
Email: rrocha@forthepeople.com

*Counsel for Plaintiff*

*/s/ Blake E. Oakes* \_\_\_\_\_  
BLAKE E. OAKES (30006)