

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AARON WILLIAMS, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

PILLPACK LLC,

Defendant.

No. 3:19-cv-05282-RBL

ANSWER TO AMENDED
COMPLAINT

Defendant PillPack LLC (“PillPack”) files this answer to Plaintiff Aaron Williams’s Amended Complaint. To the extent that any allegation in the Amended Complaint is not specifically admitted, the allegation is denied. PillPack answers the corresponding numbered paragraphs of the Amended Complaint as follows:

I. NATURE OF ACTION

1. PillPack denies the allegations in Paragraph 1 of the Amended Complaint.

2. PillPack lacks knowledge or information sufficient to form a belief about the truth of the allegations in the second sentence of Paragraph 2 of the Amended Complaint and, on that basis, denies them. PillPack denies the remaining allegations of Paragraph 2 of the Amended Complaint.

3. Paragraph 3 contains Plaintiff’s characterization of this action to which no response is required. To the extent a response is required, PillPack denies it violated the

1 Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), or that Plaintiff is
2 entitled to any relief.

3 II. JURISDICTION AND VENUE

4 4. Paragraph 4 contains legal conclusions to which no response is required. To the
5 extent a response is required, PillPack admits federal district courts have original jurisdiction
6 over TCPA claims pursuant to 28 U.S.C. § 1331.

7 5. PillPack lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations in the second sentence of Paragraph 5 and, on that basis, denies them.
9 PillPack denies all remaining allegations in Paragraph 5 of the Amended Complaint.

10 6. Paragraph 6 contains legal conclusions to which no response is required. To the
11 extent a response is required, PillPack denies the allegations in Paragraph 6 of the Amended
12 Complaint.

13 III. PARTIES

14 7. PillPack lacks knowledge or information sufficient to form a belief about the
15 truth of the allegation in Paragraph 7, and on that basis, denies it.

16 8. PillPack admits that its primary pharmacy is located in Manchester, New
17 Hampshire. PillPack denies all remaining allegations in Paragraph 8 of the Amended
18 Complaint.

19 IV. FACTUAL ALLEGATIONS

20 A. Defendant Made Non-Emergency Calls to the Cellular Phones of Plaintiff and 21 Other Consumers Without Their Prior Express Written Consent.¹

22 9. PillPack lacks knowledge or information sufficient to form a belief about the
23 truth of the allegations in Paragraph 9 of the Amended Complaint and, on that basis, denies
24 them.

25 10. PillPack denies the allegations in Paragraph 10 of the Amended Complaint.

26 11. PillPack denies the allegations in Paragraph 11 of the Amended Complaint.

27 ¹ Heading A contains legal conclusions to which no response is required. To the extent a response is required,
PillPack denies the allegations in this heading.

1 12. PillPack denies the allegations in Paragraph 12 of the Amended Complaint.

2 13. PillPack denies the allegations in Paragraph 13 of the Amended Complaint.

3 14. PillPack lacks knowledge or information sufficient to form a belief about the
4 truth of the allegations in the first sentence of Paragraph 14 of the Amended Complaint and, on
5 that basis, denies them. PillPack denies all remaining allegations in Paragraph 14 of the
6 Amended Complaint.

7 15. PillPack lacks knowledge or information sufficient to form a belief about the
8 truth of the allegations in Paragraph 15 of the Amended Complaint and, on that basis, denies
9 them.

10 16. PillPack admits it has been sued for allegedly sending text messages in violation
11 of the TCPA, but denies that it did so. Except as expressly admitted, PillPack denies all
12 allegations in Paragraph 16 of the Amended Complaint.

13 17. PillPack admits that it is aware of the TCPA. PillPack denies all remaining
14 allegations in Paragraph 17 of the Amended Complaint.

15 **B. Defendant Used an ATDS or an Artificial or Pre-recorded Voice.²**

16 18. PillPack denies the allegations in Paragraph 18 of the Amended Complaint.

17 19. PillPack denies the allegations in Paragraph 19 of the Amended Complaint.

18 20. PillPack admits it is a wholly owned, indirect subsidiary of Amazon.com, Inc.
19 PillPack denies all remaining allegations in Paragraph 20 of the Amended Complaint.

20 21. PillPack lacks knowledge or information sufficient to form a belief about the
21 truth of the allegations in Paragraph 21 and, on that basis, denies them.

22 **C. Defendant's Violations of the TCPA Injured Plaintiff.³**

23 22. PillPack lacks knowledge or information sufficient to form a belief about the
24 truth of the allegations in Paragraph 22 and, on that basis, denies them.

25
26 ² Heading B contains legal conclusions to which no response is required. To the extent a response is required,
PillPack denies the allegations in this heading.

27 ³ Heading C contains legal conclusions to which no response is required. To the extent a response is required,
PillPack denies the allegations in this heading.

1 23. PillPack denies the allegations in Paragraph 23 of the Amended Complaint.

2 24. PillPack denies the allegations in Paragraph 24 of the Amended Complaint.

3 **V. CLASS ACTION ALLEGATIONS**

4 25. Paragraph 25 contains legal conclusions to which no response is required. To
5 the extent a response is required, PillPack denies that any class should be certified in this case.
6 PillPack denies all remaining allegations in Paragraph 25.

7 26. Paragraph 26 contains legal conclusions to which no response is required. To
8 the extent a response is required, PillPack denies the allegations in Paragraph 26.

9 27. PillPack denies the allegations in this paragraph.

10 **Numerosity**

11 28. PillPack lacks knowledge or information sufficient to form a belief about the
12 truth of the allegations in the first sentence of Paragraph 28 and, on that basis, denies them.
13 PillPack denies all remaining allegations in Paragraph 28 of the Amended Complaint.

14 29. PillPack denies the allegations in Paragraph 29 of the Amended Complaint.

15 **Commonality and Predominance**

16 30. PillPack denies the allegations in Paragraph 30 of the Amended Complaint,
17 including all subparagraphs.

18 **Typicality**

19 31. PillPack denies the allegations in Paragraph 31 of the Amended Complaint.

20 **Adequacy of Representation**

21 32. PillPack denies the allegations in Paragraph 32 of the Amended Complaint.

22 **Superiority**

23 33. PillPack denies the allegations in Paragraph 33 of the Amended Complaint.

24 **VI. FIRST CLAIM FOR RELIEF**

25 **Violation of § 227(b)(1) for calls made using**
26 **an ATDS or artificial/prerecorded voice**

27 34. PillPack denies the allegations in Paragraph 34 of the Amended Complaint.

VII. SECOND CLAIM FOR RELIEF

Violation of § 227(c) for calls placed to numbers listed on the Do Not Call Registry

35. PillPack denies the allegations in Paragraph 35 of the Amended Complaint.

VIII. PRAYER FOR RELIEF

The remainder of Plaintiff's Amended Complaint is a prayer for relief to which no response is required. To the extent a response is required, PillPack denies Plaintiff or any members of the putative class are entitled to any of the relief sought.

AFFIRMATIVE DEFENSES

PillPack asserts the following affirmative defenses. By pleading these defenses, PillPack does not assume any burden of proof as to any fact issue or other element of any cause of action that properly belongs to Plaintiff. PillPack reserves the right to amend or supplement its affirmative defenses.

First Affirmative Defense

The Amended Complaint fails to allege facts sufficient to state a claim against PillPack.

Second Affirmative Defense

Prior express consent existed to contact Plaintiff and/or others alleged to be members of the putative class.

Third Affirmative Defense

PillPack did not use an "automatic telephone dialing system," as defined in the TCPA, to call Plaintiff and/or others alleged to be members of the putative class.

Fourth Affirmative Defense

PillPack did not make a call or send a text message to Plaintiff and/or others alleged to be members of the putative class, as defined under the TCPA.

Fifth Affirmative Defense

Plaintiff and/or others alleged to be members of the putative class lack standing to assert the claims stated in the Amended Complaint and to seek some or all of the relief requested.

1 **Sixth Affirmative Defense**

2 Plaintiff and/or others alleged to be members of the putative class have sustained no
3 cognizable injury or damages.

4 **Seventh Affirmative Defense**

5 The relief requested in the Amended Complaint is barred in whole or in part by the
6 terms of the applicable agreements between PillPack and those alleged to be members of the
7 putative class.

8 **Eighth Affirmative Defense**

9 Awarding Plaintiff and/or others alleged to be members of the putative class the relief
10 sought in the Amended Complaint would violate Plaintiff's and many of the alleged putative
11 class members' rights to due process of law under the United States Constitution. *See, e.g.,*
12 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985).

13 **Ninth Affirmative Defense**

14 Plaintiff cannot satisfy the prerequisites set forth in Federal Rule of Civil Procedure 23
15 to maintain a class action.

16 **Tenth Affirmative Defense**

17 Plaintiff's claim for statutory penalties of up to \$1,500 per violation of the TCPA for
18 himself and the putative class is barred because PillPack did not engage in willful or knowing
19 misconduct.

20 **Eleventh Affirmative Defense**

21 The alleged damages, if any, were caused, in whole or in part, by the acts or omissions
22 of unnamed third parties, and PillPack is not responsible for their conduct.

23 **Twelfth Affirmative Defense**

24 As applied, the TCPA violates the First Amendment of the United States Constitution.

25 **Thirteenth Affirmative Defense**

26 The Hobbs Act cannot be applied validly or constitutionally to preclude PillPack from
27 raising defenses to an action arising under the TCPA.

1 **Fourteenth Affirmative Defense**

2 The claims of those alleged to be members of the putative class are barred in whole or
3 in part by the exclusion in the applicable agreements of any liability for indirect, incidental,
4 special, punitive, or consequential damages, and by the limitation of the applicable agreements
5 and the remedies contained in those agreements.

6 **Fifteenth Affirmative Defense**

7 The claims of Plaintiff and/or others alleged to be members of the putative class fail
8 because Plaintiff and/or others alleged to be members of the putative class failed to take
9 reasonable steps to mitigate their alleged damages, if any, and their recovery must be barred or
10 diminished accordingly.

11 **Sixteenth Affirmative Defense**

12 Awarding Plaintiff and/or others alleged to be members of the putative class the relief
13 sought in the Amended Complaint would violate PillPack's right to due process of law under
14 the United States Constitution. *See, e.g., BMW v. Gore*, 517 U.S. 559, 575, 580 (1996), and its
15 progeny.

16 **Seventeenth Affirmative Defense**

17 The claims of those alleged to be members of the putative class are barred because
18 those alleged to be members of the putative class failed to engage in the contractually agreed
19 upon pre-litigation dispute resolution provisions in the PillPack Terms of Use.

20 **Eighteenth Affirmative Defense**

21 The claims of those alleged to be members of the putative class are barred because the
22 contractually agreed upon forum selection clause in the PillPack Terms of Use designates
23 Hillsborough County, New Hampshire as the sole venue for all disputes.

24 **Nineteenth Affirmative Defense**

25 The claims of those alleged to be members of the putative class are barred under the
26 contractually agreed upon dispute resolution provision in the PillPack Terms of Use to the
27 extent they arose more than one year prior to the filing of the complaint.

PRAYER FOR RELIEF

Defendant PillPack respectfully requests this Court:

- A. Enter judgment in PillPack’s favor and against Mr. Williams;
- B. Award PillPack its costs of suit;
- C. Award PillPack its attorneys’ fees to the extent permitted by law; and
- D. Grant PillPack such other and further relief as this Court deems just and proper.

DATED this 22nd day of May, 2019.

Davis Wright Tremaine LLP
Attorneys for PillPack LLC

By s/ Kenneth E. Payson
By s/ Rebecca J. Francis
By s/ Lauren B. Rainwater
By s/ Sara A. Fairchild

Kenneth E. Payson, WSBA #26369
Rebecca J. Francis, WSBA #41196
Lauren B. Rainwater, WSBA #43625
Sara A. Fairchild, WSBA #54419
920 Fifth Avenue, Suite 3300
Seattle, Washington 98104-1610
Telephone: (206) 622-3150
Facsimile: (206) 757-7700
E-mail: kenpayson@dwt.com
rebeccafrancis@dwt.com
laurenrainwater@dwt.com
sarafairchild@dwt.com

CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2019, I filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

DATED this 22nd day of May, 2019.

s/ Kenneth E. Payson
Kenneth E. Payson

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27