

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

MELVIN CORNELIUS III,

*Plaintiff,*

CIVIL ACTION

v.

FILE NO. 4:24-cv-00025-RSB-CLR

DEERE CREDIT SERVICES, INC.

*Defendant.*

\_\_\_\_\_/

**ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT DEERE  
CREDIT SERVICES, INC. TO PLAINTIFF'S CLASS ACTION COMPLAINT**

Defendant Deere Credit Services, Inc. ("Plaintiff") hereby files its Answer and Affirmative Defenses to Plaintiff's Class Action Complaint as follows:

**Nature of this Action**

1. To the extent that a response is deemed necessary, Defendant denies that Plaintiff is entitled to any of the relief he seeks, either individually or on behalf of any classes which he purports to represent.

2. Denied.

3. Denied.

**Jurisdiction and Venue**

4. Denied.

5. Denied.

6. Denied.

### **Parties**

7. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 7 of the Complaint, and therefore must deny same.

8. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 8 of the Complaint, and therefore must deny same.

9. Admitted.

10. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 10 of the Complaint, and therefore must deny same.

### **Factual Allegations**

11. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 11 of the Complaint, and therefore must deny same.

12. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 12 of the Complaint, and therefore must deny same.

13. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 13 of the Complaint, and therefore must deny same.

14. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 14 of the Complaint, and therefore must deny same.

15. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 15 of the Complaint, and therefore must deny same.

16. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 16 of the Complaint, and therefore must deny same.

17. Denied.

18. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 18 of the Complaint, and therefore must deny same.

19. Denied.

20. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 20 of the Complaint, and therefore must deny same.

21. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 21 of the Complaint, and therefore must deny same.

22. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 22 of the Complaint, and therefore must deny same.

23. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 23 of the Complaint, and therefore must deny same.

24. Denied.

25. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 25 of the Complaint, and therefore must deny same.

26. Denied.

27. Denied.

28. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 28 of the Complaint, and therefore must deny same.

29. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 29 of the Complaint, and therefore must deny same.

30. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 30 of the Complaint, and therefore must deny same.

31. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 31 of the Complaint, and therefore must deny same.

32. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 32 of the Complaint, and therefore must deny same.

33. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 33 of the Complaint, and therefore must deny same.

34. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 34 of the Complaint, and therefore must deny same.

35. Denied.

36. Denied.

37. Denied.

38. Denied.

#### **Class Action Allegations**

39. To the extent that a response is deemed necessary, Defendant denies that Plaintiff is entitled to any of the relief he seeks, either individually or on behalf of any classes which he purports to represent.

40. To the extent that a response is deemed necessary, Defendant denies that Plaintiff is entitled to any of the relief he seeks, either individually or on behalf of any classes which he purports to represent.

41. Denied.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

53. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 53 of the Complaint, and therefore must deny same.

54. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 54 of the Complaint, and therefore must deny same.

55. Defendant is without sufficient knowledge or information to either admit or deny the allegation contained in Paragraph number 55 of the Complaint, and therefore must deny same.

56. Denied.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

- 61. Denied.
- 62. Denied.
- 63. Denied.
- 64. Denied.
- 65. Denied.
- 66. Denied.

**Count I**  
**Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

- 67. Defendant reasserts is response to paragraphs 1-66.
- 68. Denied.
- 69. Denied.
- 70. Denied.

**Prayer for Relief**

To the extent that a response is deemed necessary, Defendant denies that Plaintiff is entitled to any of the relief he seeks, either individually or on behalf of any classes which he purports to represent.

**AFFIRMATIVE DEFENSES**

The following defenses are based on Deere Credit Services, Inc. knowledge, information, and belief at this time. Deere Credit Services, Inc. specifically reserves the right to assert additional affirmative or other defenses and/or modify, amend, or supplement any defense contained herein at any time. Without admitting any of the facts in the Complaint, Deere Credit Services, Inc. asserts and alleges the following affirmative defenses. By setting forth these defenses, Deere Credit Services, Inc. does not assume the burden of proving any fact, issue, or element of a cause of action where

such burden properly belongs to Cornelius. Furthermore, all defenses are pleaded in the alternative, and do not constitute an admission of liability or that Cornelius is entitled to any relief whatsoever.

1. **No ATDS or Prerecorded Voice.** The phone calls allegedly made to Cornelius and any members of the putative classes were not sent using an automatic telephone dialing system or prerecorded voice.

2. **Ratification.** The claims of Plaintiff and any members of the putative classes are barred, in whole or in part, by the doctrine of ratification and because Cornelius and/or any members of the putative classes acquiesced to any conduct engaged in by Deere Credit Services, Inc.

3. **Waiver.** The claims of Cornelius and any members of the putative classes are barred by the doctrine of waiver.

4. **Estoppel.** The claims of Cornelius and any members of the putative classes are barred, in whole or in part, by their own conduct, actions, and inactions, which amount to and constitute an estoppel of all claims and relief sought.

5. **TCPA Unconstitutional.** The TCPA violates the First Amendment, Fifth Amendment, Sixth Amendment, Eighth Amendment, Fourteenth Amendment and Article I to the United States Constitution, and it is unconstitutional under state law.

6. **Statute of Limitations.** To the extent the claims of any members of the putative classes arose prior to the applicable prescriptive or statutory period, those claims are barred, in whole or in part, by the statute of limitations.

7. **Good Faith.** The claims of Plaintiff and any members of the putative class are barred, in whole or in part, by Deere Credit Services, Inc. good faith and/or good faith



legal defense. Deere Credit Services, Inc. reasonably believed it had consent to make calls to the numbers of any customers who consented to such communications. To the extent that calls were made, such calls were not made for reasons of solicitation but instead to provide a service to Deere Credit Services, Inc.'s customers.

8. **Adequate Remedy at Law.** Injunctive, equitable, and/or declaratory relief is inappropriate because Plaintiff and members of the putative classes have an adequate remedy at law.

9. **Not Willful.** The conduct and/or violations of the law alleged against Deere Credit Services, Inc. are not sufficient to be "willful." To the extent any violation of the TCPA occurred, it resulted from a *bona fide* error, notwithstanding procedures reasonably adapted to avoid such error, and therefore, was not willful or knowing.

10. **Suit May Not Proceed as a Class Action.** Deere Credit Services, Inc. alleges that Cornelius may not maintain this lawsuit as a class action because his purported claim is not sufficiently typical or representative of those of the putative classes, his purported claim is adverse to the interests of the members of the putative classes, there are no questions of law or fact common the putative classes, common issues of fact and law do not predominate over individual issues, proof particular to each putative class member's claims and defenses thereto will vary widely, damages cannot be proven on a class-wide basis, the putative class representative will not adequately represent the putative classes, and a class action is not a manageable or superior method for adjudicating the purported claims set forth in the complaint.

11. **No Ascertainability.** Cornelius may not maintain this lawsuit as a class action because the classes cannot be readily ascertained through Deere Credit Services, Inc.'s records or any other means.

12. **No Administrative Feasibility.** Cornelius' class definitions do not contain objective criteria that allow for class members to be identified in an administratively feasible way.

13. **No Numerosity.** Cornelius may not maintain this lawsuit as a class action because the actual classes are not sufficiently numerous.

14. **No Typicality.** Cornelius may not maintain this lawsuit on behalf of a class because there is not a sufficient nexus between the claims of the Cornelius and those of the classes at large.

15. **Standing.** Cornelius lacks standing to assert the claims alleged in the Complaint.

16. **Failure to State a Claim for Injunctive Relief.** Cornelius has failed to state a claim for injunctive relief.

17. **Failure to State a Claim for Declaratory Relief.** Cornelius has failed to allege facts from which it appears there is a substantial likelihood he will suffer injury in the future.

18. **Non-Delegation Doctrine.** The TCPA represents an unconstitutional delegation of authority from Congress and is unenforceable pursuant to the non-delegation doctrine.

21. **Prior Express Invitation or Permission.** Cornelius and the putative classes are barred in whole or in part from asserting their claims because they provided

Deere Credit Services, Inc. with the requisite “prior express invitation or permission” to receive telephone calls of the type about which the Complaint complains.

22. **Unclean Hands.** Cornelius and the putative class members are barred from asserting their claims, in whole or in part, to the extent they are subject to the doctrine of unclean hands.

23. **Failure to Mitigate Damages.** To the extent that Cornelius and the putative class members suffered any damages, Cornelius and the putative class members failed to take any and all reasonable actions to avoid or reduce their damages, and any damages awarded to them must be reduced accordingly.

24. **No Proximate Cause.** Deere Credit Services, Inc. did not proximately cause any damage, injury or violation alleged in the Complaint.

25. **Established Business Relationship.** The claims of Cornelius and the putative classes are barred, in whole or in part, to the extent they maintained an established business relationship with the caller.

26. **Safe Harbor.** The claims of Cornelius and the putative class are barred, in whole or in part, by the TCPA’s “Safe Harbor” provision or other “Safe Harbor” defenses. Deere Credit Services, Inc.’s actions are protected by the TCPA’s statutory safe harbor provision, 47 C.F.R. § 64.1200(c)(2), because Deere Credit Services, Inc.’s conduct meets the standards set forth by that provision.

27. **Response to Customer Inquiry/Request.** The claims of Cornelius and the putative classes are barred, in whole or in part, to the extent that the calls at issue were made in response to a customer inquiry, or request to be called.

28. **Negligence.** Cornelius and the putative classes' claims are barred because their alleged damages are the result of their own negligence.

29. **No Actual Harm.** The claims of Cornelius and the putative classes are barred in whole or in part because they have not been harmed by any alleged acts of Deere Credit Services, Inc.

30. **Express Consent.** Even if Deere Credit Services, Inc. had utilized an automatic telephone dialing system or made calls using a prerecorded or artificial voice, the claims of members of the putative classes are barred because, pursuant to the express terms and conditions of the Deere Credit Services, Inc. agreement signed by members of the putative classes, Deere Credit Services, Inc. had express consent to contact those individuals using an automatic telephone dialing system or prerecorded or artificial voice to discuss their accounts, including current and possible future services, customer service and billing.

31. **Unjust Enrichment.** Cornelius' claims are barred because Cornelius would be unjustly enriched if allowed to recover all or any part of the damages or remedies alleged in the Complaint.

32. **Called Party Consent.** Cornelius' claims are barred in whole or in part to the extent it is not unlawful to make a call using an automatic telephone dialing system or an artificial or prerecorded voice if the call is made with the consent of the called party.

33. **No Liability for Left Message.** Cornelius' claims are barred in whole or in part to the extent there is no liability for calls to residential lines even where an artificial or prerecorded voice leaves a message.

34. **Laches.** Cornelius' and the putative classes' claims are barred, in whole or in part, by the doctrine of laches.

35. **Apportionment.** Without admitting that any damages exist, if damages were suffered by Cornelius as alleged in the Complaint, those damages were proximately caused by and contributed by persons other than Deere Credit Services, Inc. The liability, if any exists, of Deere Credit Services, Inc. and/or any responsible parties, named or unnamed, should be apportioned according to their relative degrees of fault, and the liability of Deere Credit Services, Inc. should be reduced accordingly.

36. **Supervening Cause.** The causes of action alleged in the Complaint are barred, in whole or in part, to the extent that any injury or loss sustained was caused by intervening or supervening events over which Deere Credit Services, Inc. had or has no control.

37. **Equitable Indemnity.** To the extent that Cornelius has suffered any damage as a result of any alleged act or omission of Deere Credit Services, Inc., which Deere Credit Services, Inc. denies, Deere Credit Services, Inc. is entitled to equitable indemnity according to comparative fault from other persons and/or entities causing or contributing to such damages, if any.

38. **Setoff.** To the extent that Cornelius has suffered any damage as a result of any alleged act or omission of Deere Credit Services, Inc., which Deere Credit Services, Inc. denies, Deere Credit Services, Inc. is on information and belief entitled to a setoff in the amount Cornelius owes to Deere Credit Services, Inc., including any recoverable interest and attorneys' fees.

39. **Reasonable Reliance.** The claims of Cornelius and the putative class are barred in whole or in part to the extent Deere Credit Services, Inc. reasonably relied on the consent of the intended call recipients.

**Demand for Jury Trial**

Pursuant to Federal Rule of Civil Procedure 38(b), Deere Credit Services, Inc. demands a trial by jury of any and all triable issues.

Respectfully submitted this 23<sup>rd</sup> day of February, 2024.

**CARLTON FIELDS, P.A.**

By: /s/ Amanda D. Proctor  
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***Attorneys for Defendant Deere  
Finance Credit Services, Inc.***

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I electronically filed the foregoing with the Clerk by using the CM/ECF system, which will send a notice of electronic filing to all registered users of the CM/ECF system.

This 23<sup>rd</sup> day of February, 2024.

/s/ Amanda D. Proctor  
Amanda D. Proctor