

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-  
DADE COUNTY, FLORIDA

CASE NO.

MARISSA PORTER,  
individually and  
on behalf of all others similarly situated,

Plaintiff,

**CLASS ACTION**

**JURY TRIAL DEMANDED**

v.

BIG SANDY FURNITURE, INC. d/b/a  
BIG SANDY SUPERSTORE,

Defendant.

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**CLASS ACTION COMPLAINT**

Plaintiff, Marissa Porter (“Plaintiff”), brings this action against Defendant, BIG SANDY FURNITURE, INC. d/b/a BIG SANDY SUPERSTORE (“Defendant”), to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 and the Florida Telephone Solicitation Act (“FTSA”), Fla. Stat. § 501.059.

**NATURE OF THE ACTION**

1. This is a putative class action pursuant to the TCPA and FTSA.
2. To promote its goods and services, Defendant engages in unsolicited text messaging to consumers that have registered their telephone numbers on the National Do Not Call Registry and who have not provided Defendant with their consent, in violation of both the TCPA and FTSA.
3. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s unlawful conduct which has resulted in intrusion into the peace and quiet in a realm that is private and personal to Plaintiff and the Class members. Plaintiff also seeks statutory damages on behalf of herself and members of the Class, and any other available legal or equitable remedies.

## **PARTIES**

4. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Polk County, Florida.

5. Defendant is, and at all times relevant hereto was, a foreign corporation headquartered in Ohio and doing business across the United States, including but not limited to Florida.

## **JURISDICTION AND VENUE**

6. This Court has subject matter jurisdiction under Florida Rule of Civil Procedure 1.220 and Fla. Stat. § 26.012(2). The matter in controversy exceeds the sum or value of \$50,000 exclusive of interest, costs, and attorney's fees.

7. Defendant is subject to personal jurisdiction in Florida because this suit arises out of and relates to Defendant's contacts with this state. Defendant made or caused to be made telephonic sales calls into Florida without regards to consumers rights' in violation of the TCPA and FTSA.

8. Personal Jurisdiction and Venue proper in this Court under *Babcock v. Whatmore*, 707 So.2d 702, 704 (Fla.1998) as class members in this District and in the State of Florida received unwanted text messages.

9. Venue for this action is proper in this Court pursuant to Fla. Stat. § 47.051 because the cause of action accrued in Miami-Dade County.

## **FACTS**

10. On or about June 5, 2023, October 5, 2023, December 15, 2023, and February 13, 2024, Defendant sent a text message solicitation to Plaintiff's cellular telephone number ending in 9646 (the "9646 Number") as depicted below:

+1 (740) 689-9617 >

**Buy the Sofa and  
Loveseat, get a  
FREE Accent Chair!**

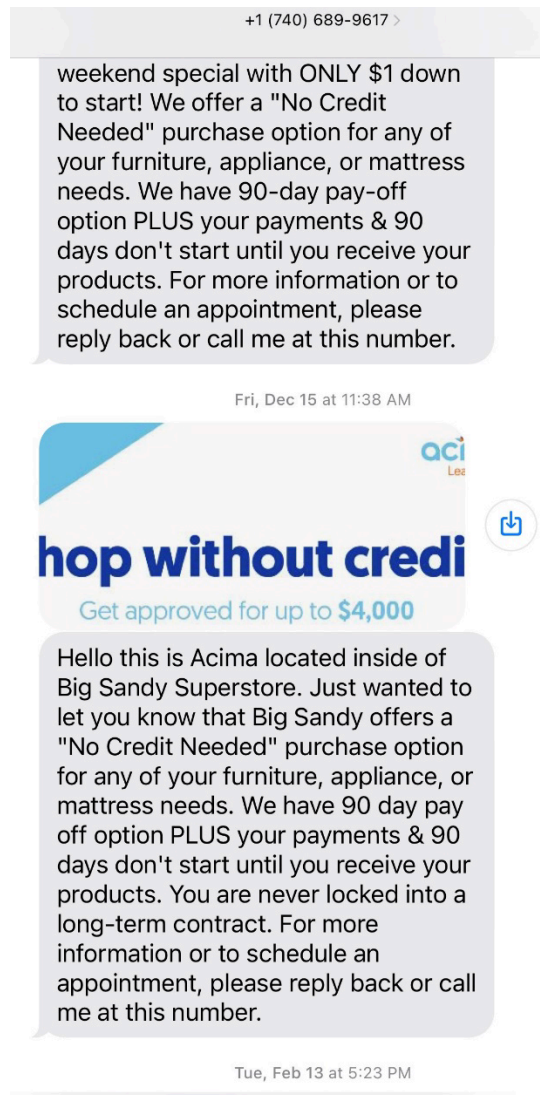


This is Acima Leasing located inside Big Sandy in Lancaster, OH. Just wanted to let you know that Big Sandy offers a program known as Acima Leasing which is a "No Credit Needed" purchase option for any of your furniture, appliance, or mattress needs. A flexible payoff schedule. You are never locked into a long-term contract. Also, payments do not start until after delivery or same day pick up. Your initial down payment is only \$49 plus tax. We hope to see you soon.

Mon, Jun 5 at 4:24 PM

Hi Marissa! This is Acima at Big Sandy. I wanted to let you know that June 7th is the last day we will be able to offer our Friends and Family rebate of up to \$500 & also it's the last day of our Memorial Day Sale prices! If you are interested in coming in to check out our below-market deals, please let me know so we can schedule an appointment. Hope to hear from you soon!

Thu, Oct 5 at 2:17 PM



11. As demonstrated by the above screenshots, the purpose of Defendant's text messages was to advertise, promote, and/or market Defendant's property, goods, and/or services.

12. Plaintiff is the subscriber and sole user of the 9646 Number and is financially responsible for phone service to the 9646 Number.

13. Plaintiff registered her cellular telephone number on the National Do-Not-Call Registry on or about August 8, 2008.

14. Plaintiff utilizes the cellular telephone number that received Defendant's text messages for personal purposes and the number is Plaintiff's residential telephone line and primary means of reaching Plaintiff at home.

15. Upon information and belief, Defendant maintains and/or has access to outbound transmission reports for all text messages sent advertising/promoting its services and goods. These reports show the dates, times, target telephone numbers, and content of each message sent to Plaintiff and the Class members.

16. Plaintiff has never had any type of business relationship with Defendant.

17. At no point in time did Plaintiff provide Defendant with her express written consent to be contacted.

18. Plaintiff never signed any type of authorization permitting or allowing Defendant to send her text message solicitations.

19. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered her or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

20. Defendant's text messages originated from telephone number 740-689-9617, a number which upon information and belief are owned and operated by Defendant or on behalf of Defendant for Defendant's financial benefit.

21. To send the text messages, Defendant used a messaging platform (the "Platform"), which permitted Defendant to transmit blasts of text messages automatically and without any human involvement. The Platform automatically made a series of calls to Plaintiff's and the Class members' stored telephone numbers with no human involvement after the series of calls were initiated utilizing

the Platform. Defendant's use of a generic text message (depicted above) further demonstrates that Defendant utilizes automated dialing systems to mass transmit solicitation texts to consumers.

22. The Platform has the capacity to select and dial numbers automatically from a list of numbers, which was in fact utilized by Defendant.

23. The Platform has the capacity to schedule the time and date for future transmission of text messages, which was in fact utilized by Defendant.

24. The Platform also has an auto-reply function that results in the automatic transmission of text messages.

25. Defendant was not required to and did not need to utilize the Platform to send messages to Plaintiff and the Class members. Instead, Defendant opted to use the Platform to maximize the reach of its text message advertisements at a nominal cost to Defendant.

26. Defendant would be able to conduct its business operations without sending automated text messages to consumers.

27. Defendant would be able to send automated text messages to consumers, and in compliance with the FTSA, by securing the proper consent from consumers prior to sending text messages.

28. Defendant would be able to send text messages to consumers without consent by utilizing a non-automated text messaging system.

29. Accordingly, it is not impossible for Defendant to comply with the FTSA in the context of transmitting text messages.

30. The burden and cost to Defendant of securing consent from consumers that complies with the FTSA is nominal.

31. Compliance with the FTSA will not result in Defendant having to cease its business operations.

32. Compliance with the FTSA will not result in Defendant having to alter the prices of any goods or services it provides in the marketplace.

33. Compliance with the FTSA will not force Defendant to seek regulatory approval from the State of Florida before undertaking any type of commercial transaction.

34. Defendant's unlawful conduct resulted in intrusion into the peace and quiet in a realm that is private and personal to Plaintiff and the Class members.

### **CLASS ALLEGATIONS**

#### **PROPOSED CLASS**

35. Plaintiff brings this case as a class action pursuant to Florida Rule of Civil Procedure 1.220(b)(2) and (b)(3), on behalf of herself and all others similarly situated.

36. Plaintiff brings this case on behalf of the Classes defined as follows:

**TCPA Class: All persons in the United States who from four years prior to the filing of this action through the date of class certification (1) Defendant placed more than one text message call within any 12-month period; (2) where the person's telephone number that had been listed on the National Do Not Call Registry for at least thirty days; (3) regarding Defendant's property, goods, and/or services.**

**FTSA Class: All persons in Florida, who since July 1, 2021 until the filing of the Complaint (1) were sent more than one text message by or on behalf of Defendant; (2) regarding Defendant's goods or services, to said person's cellular telephone number; and (3) who did not provide Defendant with his/her prior express written consent.**

37. Plaintiff reserves the right to modify the Class definitions as warranted as facts are learned in further investigation and discovery.

38. Defendant and its employees or agents are excluded from the Classes. Plaintiff does not know the number of members in the Classes, but believes the Class members number in the several thousands, if not more.

**NUMEROSITY**

39. Upon information and belief, Defendant has placed violative text message calls to telephone numbers belonging to at least 50 persons. The members of the Classes, therefore, are believed to be so numerous that joinder of all members is impracticable.

40. Identification of the Class members is a matter capable of ministerial determination from Defendant's call records.

**COMMON QUESTIONS OF LAW AND FACT**

41. There are numerous questions of law and fact common to the Classes which predominate over any questions affecting only individual members of the Class. Among the questions of law and fact common to the Classes are:

- a) Whether Defendant violated 47 C.F.R. § 64.1200(c);
- b) Whether Defendant violated Fla. Stat. § 501.059;
- c) Whether Defendant's conduct was knowing and willful;
- d) Whether Defendant violated the privacy rights of Plaintiff and members of the class;
- e) Whether Defendant is liable for damages, and the amount of such damages; and
- f) Whether Defendant should be enjoined from such conduct in the future.

42. The common questions in this case are capable of having common answers. If Plaintiff's claim that Defendant routinely transmits telephonic sales calls without consent is accurate, Plaintiff and the Class members will have identical claims capable of being efficiently adjudicated and administered in this case.

**TYPICALITY**

43. Plaintiff's claims are typical of the claims of the Class members, as they are all based on the same factual and legal theories.

**PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

44. Plaintiff is a representative who will fully and adequately assert and protect the interests of the Classes and has retained competent counsel. Accordingly, Plaintiff is an adequate representative and will fairly and adequately protect the interests of the Class.

**SUPERIORITY**

45. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit because individual litigation of the claims of all members of the Classes is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Classes are in the millions of dollars, the individual damages incurred by each member of the Classes resulting from Defendant's wrongful conduct are too small to warrant the expense of individual lawsuits. The likelihood of individual Class members prosecuting their own separate claims is remote, and, even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases.

46. The prosecution of separate actions by members of the Classes would create a risk of establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For example, one court might enjoin Defendant from performing the challenged acts, whereas another may not. Additionally, individual actions may be dispositive of the interests of the Class, although certain class members are not parties to such actions.

**COUNT I**

**Violations of 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(d)**  
**(On Behalf of Plaintiff and the TCPA Class)**

47. Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1 through 46 as if fully set forth herein.

48. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides in pertinent part that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

49. Per 47 C.F.R. § 64.1200(e), § 64.1200(c) is "applicable to any person or entity making telephone solicitations or telemarketing calls to wireless telephone numbers."

50. Any "person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may" may bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers' privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

51. Defendants violated 47 C.F.R. § 64.1200(c) by initiating telephone solicitations to telephone subscribers such as Plaintiff and the TCPA Class members who registered their respective telephone numbers on the National Do Not Call Registry, a listing of persons who do not wish to receive telephone solicitations that is maintained by the federal government.

52. Defendants violated 47 U.S.C. § 227(c)(5) because Plaintiff and TCPA Class members received more than one message in a 12-month period from Defendants in violation of 47 C.F.R. § 64.1200.

53. As a result of Defendants' conduct as alleged herein, Plaintiff and the TCPA Class members suffered actual damages and, under section 47 U.S.C. § 227(c), are entitled receive up to \$500 in damages for such violations of 47 C.F.R. § 64.1200.

54. Plaintiff requests for this Court to enter an Order granting the relief outlined in the Prayer for Relief below.

**COUNT II**  
**VIOLATION OF FLA. STAT. § 501.059(5)**  
**(On Behalf of Plaintiff and the FTSA Class)**

55. Plaintiff re-alleges and incorporates the allegations set forth in paragraphs 1 through 46 as if fully set forth herein.

56. In pertinent part, the FTSA provides:

A person may not make or knowingly allow to be made an unsolicited telephonic sales call if such call involves an automated system for the selection and dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.

Fla. Stat. § 501.059(5).

57. “‘Telephone solicitor’ means a natural person, firm, organization, partnership, association, or corporation, or a subsidiary or affiliate thereof, doing business in this state, who makes or causes to be made a telephonic sales call, including, but not limited to, calls made by use of automated dialing or recorded message devices.” Fla. Stat. § 501.059(1)(i).

58. Defendant is a telephone solicitor as defined under the FTSA.

59. Plaintiff and the FTSA Class Members are consumers who received one or more text messages regarding Defendant’s goods and services without providing Defendant with their prior express written consent. To Defendant.

60. As a result of Defendant’s conduct, and pursuant to § 501.059(10)(a) of the FTSA, Plaintiff and FTSA Class members were harmed and are each entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the FTSA Class members are also entitled to an injunction against future calls. *Id.*

61. Plaintiff requests for this Court to enter an Order granting the relief outlined in the Prayer for Relief below.

62. Plaintiff requests for this Court to enter an Order granting the relief outlined in the Prayer for Relief below.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying this case as a class action on behalf of the Classes as defined above, and appointing Plaintiff as the representative of the Classes and Plaintiff's counsel as Class Counsel;
- b) An award of statutory damages for Plaintiff and each member of the Classes as applicable under the TCPA and FTSA;
- c) An order declaring that Defendant's actions, as set out above, violate the TCPA and FTSA;
- d) An injunction requiring Defendant to comply with the TCPA and FTSA
- e) Such further and other relief as the Court deems necessary.

**JURY DEMAND**

Plaintiff, individually and on behalf of the Classes, hereby demand a trial by jury.

DATED: December 16, 2025

Respectfully submitted,

**HIRALDO P.A.**

/s/ Manuel S. Hiraldo

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