

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ABANTE ROOTER AND PLUMBING,)	
INC., individually and on behalf of a class of)	Case No. 1:15-cv-09025
all persons and entities similarly situated,)	
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	
)	
OH INSURANCE AGENCY and)	Hon. Judge Jorge J. Alonso
ALLSTATE INSURANCE COMPANY,)	Hon. Mag. Judge Young B. Kim
)	
Defendants.)	

**ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT ALLSTATE INSURANCE COMPANY
TO PLAINTIFF’S AMENDED CLASS ACTION COMPLAINT**

Defendant Allstate Insurance Company (“Allstate”), by its undersigned attorneys, hereby answers the Amended Class Action Complaint (the “Amended Complaint,” Doc. No. 86) filed by Plaintiff Abante Rooter and Plumbing, Inc. (“Plaintiff”), as follows:

PRELIMINARY STATEMENT

1. Plaintiff Abante Rooter and Plumbing, Inc. (“Abante” or “Plaintiff”), which is owned and operated by Fred Heidarpour (“Mr. Heidarpour”), brings this action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, a federal statute enacted in response to widespread public outrage over the proliferation of intrusive, nuisance telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 745 (2012).

ANSWER: Allstate admits that Plaintiff purports to bring this action for the reason stated, but denies that Plaintiff has any viable claims against Allstate or that Plaintiff is entitled to any relief from Allstate. Moreover, Allstate admits the TCPA is a federal statute, the provisions of which speak for themselves. Allstate refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or

characterizations inconsistent therewith. Allstate denies any and all remaining allegations contained in Paragraph 1.

2. “Month after month, unwanted robocalls and texts, both telemarketing and informational, top the list of consumer complaints received by the [Federal Communications] Commission” (“FCC”).¹ The TCPA is designed to protect consumer privacy by, among other things, prohibiting the making of autodialed or prerecorded voice calls to cellular telephone numbers. See 47 U.S.C. § 227(b)(1)(A)(iii).

ANSWER: Paragraph 2 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, the order and statute cited by Plaintiff speak for themselves. Allstate refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or characterizations inconsistent therewith. Allstate preserves Plaintiff’s footnote in this response for convenience; however, such inclusion shall not be construed as an admission respecting the same. Allstate denies any and all remaining allegations contained in Paragraph 2.

3. Defendant Oh Insurance Agency made unsolicited telephone calls to Abante and others’ cellular telephone numbers using an automatic telephone dialing system (“autodialer”) and prerecorded voice to promote the goods or services of Defendant Allstate Insurance Company (“Allstate”) (collectively referred to as the “Defendants”), in violation of the TCPA.

ANSWER: Allstate denies this Paragraph insofar as it alleges that Allstate violated the TCPA or that Allstate should be held liable for any alleged conduct or misconduct of defendant Oh Insurance Agency (“Oh Agency”) or other third parties. Allstate further denies the use of the term “Defendants” in this Paragraph and throughout the Amended Complaint insofar as it implies that Allstate and Oh Agency constitute a joint entity or acted jointly with respect to matters alleged in the Amended Complaint; on the contrary, Oh Agency is an independent contractor which was required to comply strictly with Allstate’s telemarketing policies. Allstate

¹ *Omnibus TCPA Order*, GC Docket 02-278, FCC 15-72, 2015 WL 4387780, ¶1 (July 10, 2015).

is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 and those allegations are therefore denied.

4. Because the calls were transmitted using technology capable of generating thousands of similar calls per day, Plaintiff brings this action on behalf of a proposed nationwide class of persons who likewise received illegal telephone calls by or on behalf of Defendants.

ANSWER: Allstate is without sufficient knowledge or information to admit or deny the opening clause of Paragraph 4, and therefore denies it. Allstate denies that any illegal telephone calls were made by or on behalf of Allstate. Allstate admits only that Plaintiff purports to bring this action as a class action. Allstate also incorporates herein by reference its answer to Paragraph 3.

5. A class action is the best means of obtaining redress for the Defendants' illegal telemarketing, and is consistent both with the private right of action afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal Rules of Civil Procedure.

ANSWER: Paragraph 5 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies any and all allegations contained in Paragraph 5. Allstate denies all allegations that it engaged in any alleged illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

PARTIES

6. Plaintiff Abante is a California corporation.

ANSWER: Allstate is without sufficient knowledge or information to admit or deny the allegations of Paragraph 6, and therefore denies them.

7. Defendant Oh Insurance Agency is a business based in California that has its principal office is at 1421 Warner Avenue, Suite B, in Tustin, California 92780.

ANSWER: Admitted.

8. Defendant Allstate Insurance Company is an Illinois insurance company registered with the Illinois Department of Insurance to do business within the State of Illinois, and which is headquartered in this District at 2775 Sanders Road, Northbrook, Illinois 60062.

ANSWER: Admitted.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. 1332(d)(2). The matter in controversy exceeds \$5,000,000, in the aggregate, exclusive of interest and costs, as each member of the proposed Class of at least tens of thousands is entitled to up to \$1,500.00 in statutory damages for each call that has violated the TCPA. Further, Plaintiff alleges a nationwide class, which will result in at least one Class member residing in a state different from a Defendant.

ANSWER: Allstate admits only that Plaintiff purports to base federal court jurisdiction under CAFA. Defendant denies the remaining allegations in Paragraph 9.

10. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because the Plaintiff’s claims arise under federal law.

ANSWER: Admitted only that Plaintiff’s claims arise under federal law, the TCPA. The remaining allegations of Paragraph 10 are denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

11. Venue is proper under 28 U.S.C. § 1391(b)(1) and (2) because Defendant Allstate is a resident of this District, and a substantial part of the events and omissions giving rise to Plaintiff’s claims occurred in this District. Among other things, Allstate contracted in this District with third parties, such as Oh Insurance Agency, to make the telemarketing calls at issue in this action, including to Class members in this District.

ANSWER: Allstate admits that venue is proper in this District regarding Plaintiff’s individual claims because Allstate is headquartered in this District, but denies the remaining allegations of Paragraph 11. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

TCPA BACKGROUND

12. In 1991, Congress enacted the TCPA to regulate the explosive growth of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing ... can be an intrusive invasion of privacy[,]” and found that “[b]anning such automated or prerecorded telephone calls ... is the only effective means of protecting telephone consumers

from this nuisance and privacy invasion.” Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, §§ 2(5), 2(14) (1991) (codified at 47 U.S.C. § 227).

ANSWER: Paragraph 12 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies any and all allegations contained in Paragraph 12 and further denies that the quoted language has any relevance to this case or to the interpretation of the TCPA. Moreover, the statute cited by Plaintiff speaks for itself. Allstate refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or characterizations inconsistent therewith.

13. Some of the TCPA’s most stringent restrictions pertain to calls placed to cell phones: The statute categorically bans the making of any non-emergency call using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone number assigned to a cellular telephone service, unless with the “prior express consent” of the called party. *See* 47 U.S.C. § 227(b)(1)(A)(iii); *see also Soppet v. Enhanced Recovery Co.*, 679 F.3d 637, 638 (7th Cir. 2012) (“An automated call to a landline phone can be an annoyance; an automated call to a cell phone adds expense to annoyance.”). The FCC—charged by Congress to develop the rules and regulations implementing the TCPA, *see* 47 U.S.C. § 227(b)(2)—has further strengthened this prohibition; for autodialed or prerecorded voice telemarketing calls made to cell phones on or after October 16, 2013, prior express written consent is required. *See* 47 C.F.R. § 64.1200(a)(2).

ANSWER: Paragraph 13 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies any and all allegations contained in Paragraph 13 and further denies that the quoted authorities are pertinent to this action. Moreover, the statute and case cited by Plaintiff speak for themselves. Allstate refers to the TCPA and its regulations and legislative history and the cited case for their true and complete contents and denies any allegations or characterizations inconsistent therewith.

14. Further, a person or entity can be liable for calls made on its behalf in violation of the TCPA, even if that person or entity did not directly dial such calls. *See, e.g., In re Rules & Regs. Implementing the TCPA*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995) (explaining that the FCC’s “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any [TCPA] violations”). In fact, in May 2013, the FCC issued a binding declaratory ruling clarifying that sellers “may be held vicariously liable under federal common law principles of agency for TCPA violations committed by third-party telemarketers ...

under a broad range of agency principles, including not only formal agency, but also principles of apparent authority and ratification.” *In re Joint Petition Filed by DISH Network, LLC et. al for Declaratory Ruling Concerning the TCPA Rules*, 28 FCC Rcd 6574, 6584 ¶ 28 (2013) (“FCC 2013 Ruling”).

ANSWER: Paragraph 14 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies the allegations of Paragraph 14. Moreover, the statute and order cited by Plaintiff speak for themselves. Allstate refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or characterizations inconsistent therewith.

15. Accordingly, it is undeniably clear that, even if it did not directly place the call itself, an entity can be liable under the TCPA for a prohibited call made on its behalf under a number of theories, including vicarious liability. Under those circumstances, including as described herein as to Defendants, the seller is properly deemed to have initiated the call through the person or entity that actually placed it.

ANSWER: Paragraph 15 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies the allegations of Paragraph 15. Moreover, the statute cited by Plaintiff speaks for itself. Allstate refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or characterizations inconsistent therewith.

FACTUAL ALLEGATIONS RELATING TO PLAINTIFF

16. Oh Insurance Agency makes telemarketing calls to attempt to solicit customers for Allstate.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations contained in Paragraph 16 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate’s telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

17. Oh Insurance Agency's telemarketing efforts include the use of a prerecorded voice.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 17 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

18. Oh Insurance Agency telemarketing efforts included calling the cellular telephone number of Plaintiff.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 18 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

19. On September 24, 2015, Oh Insurance Agency placed two telemarketing calls to Plaintiff's telephone number used by Mr. Heidarpour, which is registered with a cellular telephone service.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 19 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

20. Mr. Heidarpour did not answer the first call, which came from (888) 772-1946, a telephone number with which he was not familiar.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 20 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

21. However, less than two minutes after Mr. Heidarpour ignored the first call, a second call was placed from the same number, (888) 772-1946.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 21 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

22. The (888) 772-1946 number is the toll-free number for Oh Insurance Agency, and is publicly advertised as such.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 22 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

23. Mr. Heidarpour answered the second call from (888) 772-1946, after which there was a significant pause, with no one audibly on the other end of the call.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 23 and therefore denies them. By way of further answer,

any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

24. When there was finally a response on the other end of the telephone, it was not a live person who answered.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 24 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

25. Rather, a prerecorded voice message played. The prerecorded message was generic, advertised insurance services, and asked the recipient to please call (888) 772-1946—the number for the Oh Insurance Agency.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 25 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

26. The facts in the preceding paragraphs indicate that the call was placed using an "automatic telephone dialing system" as defined in 47 U.S.C. § 227(a)(1).

ANSWER: Paragraph 26 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Allstate denies the allegations of Paragraph 26. Moreover, the statute cited by Plaintiff speaks for itself. Allstate

refers to the TCPA and its regulations and legislative history for their true and complete contents and denies any allegations or characterizations inconsistent therewith. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

27. In order to identify the calling party, Mr. Heidarpour called the telephone number that was left and spoke with a "Josh" with Oh Insurance Agency.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 27 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

28. The assistant for "Josh", Wendy Morales, later e-mailed Mr. Heidarpour forms for his completion, following up on the sales calls.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 28 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

29. These forms, which were sent to Mr. Heidarpour as the information needed to issue him an Allstate insurance quote, included the following information for the Oh Insurance Agency:

Oh Insurance Agency
CA Lic. #0D12116

Phone: (714) 247-1030
Toll Free: (888) 772-1946
Fax: (714) 247-1031
Email: SarahStangl@allstate.com

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 29 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

30. The toll-free telephone number advertised in the form referenced above, (888) 772-1946, is the same number for the prerecorded voice calls to Plaintiff.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 30 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

31. Defendants did not have Plaintiff's prior express consent to make these telemarketing calls, whether in writing or otherwise.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. Allstate does not have sufficient knowledge or information to either admit or deny the remaining allegations of Paragraph 31 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies.

32. In fact, prior to the filing of this lawsuit, Mr. Heidarpour contacted Oh Insurance Agency regarding any purported consent it had to make the calls at issue. In response, Oh Insurance Agency did not provide any evidence of consent, but admitted that it made the calls to Plaintiff.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 32 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate’s telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

33. Upon information and belief, the calls to Plaintiff and the Class defined below were made without regard to whether the called party consented to such calls, and neither Allstate nor Oh Insurance Agency obtained express consent for any of the calls before they were made.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. Allstate does not have sufficient knowledge or information to either admit or deny the remaining allegations of Paragraph 33 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate’s telemarketing policies.

34. Plaintiff and the class have each suffered a particularized and concrete injury-in-fact from Defendant’s calls. These calls temporarily seized and trespassed on the use of their cell phones, and were an annoyance and nuisance. The calls invaded the recipient’s privacy, and caused Plaintiff and the class to waste time and divert attention away from other activities to address the incoming calls. *See, e.g., Mims v. Arrow Fin. Servs., Inc.*, 132 S. Ct. 740 (2012) (discussing congressional findings of consumer “outrage” as to autodialed and prerecorded calls). These calls also depleted their cell phone’s battery, including not only as a result of the calls themselves, but in responding to them, as well—requiring an albeit small but real monetary expense in relation to the electricity needed to recharge for such depletion.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The

remaining allegations of Paragraph 34 are denied. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. In addition, Paragraph 34 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, the case cited by Plaintiff speaks for itself. It is further denied that Plaintiff or any class member has suffered an injury sufficient to confer Article III standing to prosecute this action.

35. In Plaintiff's case specifically, the efficient and effective operation of its business was affected by Defendants' calls, which not only temporarily seized and trespassed upon the use of Plaintiff's cell phone in the calls themselves, but required its principal to waste time addressing the calls instead of other activities. These calls invaded Mr. Heidarpour's privacy and caused him annoyance, impacting his ability to conduct Plaintiff's business.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The remaining allegations of Paragraph 35 are denied. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. It is further denied that Plaintiff or any class member has suffered an injury sufficient to confer Article III standing to prosecute this action.

ALLSTATE'S LIABILITY FOR THE CALLS AT ISSUE

36. Allstate requires its insurance agents to represent the company to consumers, including non-customers.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Allstate's exclusive insurance agents, who are independent contractors, is required to comply strictly with Allstate's telemarketing policies.

37. Allstate relies on third parties, such as Oh Insurance Agency, to solicit new applications for its business.

ANSWER: Allstate admits only that Oh Agency is an independent contractor which, among other things, solicits applications for Allstate insurance policies. The remaining allegations of Paragraph 37 are denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies.

38. Allstate also makes significant investments in its agents that attempt to solicit new customers and, according to its 2014 10-K Statement, Allstate currently has \$341,000,000 in "investments" through "agent loans."

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Moreover, the 2014 10-K Statement is a document in writing that speaks for itself.

39. The third parties that Allstate contracts with, such as Oh Insurance Agency, engage in telemarketing to promote Allstate's products.

ANSWER: Allstate admits only that any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The remaining allegations of Paragraph 39 are denied.

40. Allstate is aware that the third parties it relies upon to solicit new applications for its business use telemarketing. In fact, there are companies that are solely dedicated to telemarketing for Allstate agents. *See, e.g.*, <http://1to1insurancecalls.com/about-us/> (identifying itself as "an approved Allstate Insurance marketing vendor") (last accessed October 7, 2015).

ANSWER: Allstate admits only that any telemarketing by its exclusive insurance agents, who are independent contractors, is required to comply strictly with Allstate's

telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The remaining allegations of Paragraph 40 are denied. In addition, the cited webpage is no longer accessible.

41. In fact, for more than ten years, Allstate has been aware that it is liable for the telemarketing activities of its agents, as it paid a fine to the Pennsylvania Attorney General's office in 2003 to resolve violations of "Do Not Call" laws for the actions of Allstate agents located in Pennsylvania.

ANSWER: Allstate admits only that it resolved a dispute with the Pennsylvania Attorney General in or around 2003 with no admission of wrongdoing. That matter has no relevance to the present action. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The remaining allegations of Paragraph 41 are denied.

42. Through its contracts, as well as by other means, Allstate maintains interim control over its agents' actions, both as to telemarketing and other activities. Moreover, Allstate, at all times, has the absolute ability to control Oh Insurance Agency's use and method of telemarketing.

ANSWER: Allstate admits only that its exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. The remaining allegations of Paragraph 42 are denied.

43. For example, upon information and belief, Allstate directs the geographical area for which its agents may take credit and earn fees.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

44. Furthermore, Allstate had the interim right to instruct each and every one of its agents not to submit applications for insurance that were obtained through telemarketing.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

45. Allstate manifested assent to Oh Insurance Agency's telemarketing campaign by issuing quotes and writing insurance policies arising directly therefrom. Allstate either had actual knowledge that such quotes or new customers arose from such telemarketing campaigns, or made a conscious decision not to learn the specifics, such that it manifested assent in that way.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

46. Allstate also allows its agents—including, on information and belief, Oh Insurance Agency—to submit reimbursements for their marketing activities, including telemarketing.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

47. Allstate has absolute control over whether, and under what circumstances, it issues an insurance quote to a prospective customer.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

48. Allstate knowingly and actively accepted business that originated through the illegal telemarketing calls complained of herein.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, Allstate's exclusive insurance agents, who are independent contractors, are required to comply strictly with Allstate's telemarketing policies.

49. As a result of Defendants' conduct and pursuant to Section 227(b)(3) of the TCPA, Plaintiff and the other members of the class were harmed and are each entitled to a minimum of \$500 in damages for each violation. Plaintiff and the class are also entitled to an injunction against future calls. 47 U.S.C. § 227(b)(3).

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. In addition, Paragraph 49 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, the statute cited by Plaintiff speaks for itself.

50. Because Defendants knew or should have known that Plaintiff and the other members of the class had not given prior express consent to Defendants' autodialed calls to their cell phones—and/or willfully used an automatic telephone dialing system to place such calls to the cell phones of Plaintiff and the other members of the class without prior express consent—the Court should treble the amount of statutory damages available to Plaintiff and the other members of the class, pursuant to Section 227(b)(3) of the TCPA.

ANSWER: Denied. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. In addition, Paragraph 50 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, the statute cited by Plaintiff speaks for itself.

CLASS ACTION ALLEGATIONS

51. As authorized by Rule 23 of the Federal Rules of Civil Procedure, Plaintiff brings this action on behalf of himself and a Class consisting of:

All persons in the United States (i) to whom a call was made for the purpose of encouraging the purchase of Allstate goods or services (ii) to a cellular telephone number (iii) using the same or similar telephone dialing system or prerecorded voice message as in Defendants' calls to Plaintiff (iv) from the four-year period preceding the filing of this action through the date of class certification.

Plaintiff alleges a subclass of Class members to whom such calls were made on or after October 16, 2013.

ANSWER: Allstate admits only that Plaintiff brings this action on behalf of himself and the above-described putative class and subclass. Paragraph 51 contains narrative definitions of a putative class and subclass and does not contain any actual allegations to which a response is required. To the extent a response is required, Allstate denies Paragraph 51 and denies that this case is appropriate for class treatment. Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties.

52. Upon information and belief, the cellular telephone numbers of more than 100 persons were called for the purpose of encouraging the purchase of Allstate insurance in the four years prior to the filing of this action, using the same or similar telephone dialing system or prerecorded voice message used in Defendants' calls to Plaintiff.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. Allstate does not have sufficient knowledge or information to either admit or deny the remaining allegations of Paragraph 52 and therefore denies them. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate also denies that this case is appropriate for class treatment.

53. Common questions of law or fact exist as to all members of the Class, and predominate over any questions solely affecting any individual member, including Plaintiff. Such questions common to the Class include but are not limited to:

- (a) Whether Defendants used an “automatic telephone dialing system” or an “artificial or prerecorded voice” as such terms are defined or understood under the TCPA and applicable FCC regulations and orders;
- (b) Whether Defendants had “prior express consent” to contact Plaintiff and the other members of the Class when making calls to such persons’ cell phones using an automatic telephone dialing system or an artificial or prerecorded voice;
- (c) Whether Allstate should be held liable for the calls made by Oh Insurance Agency and others on its behalf; and
- (d) Damages, including whether Defendants’ violations were performed willfully or knowingly such that Plaintiff and the other members of the Class are entitled to trebled damages under 47 U.S.C. § 227(b)(3).

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate’s telemarketing policies. Allstate also denies that this action is appropriate for class treatment. In addition, Paragraph 53 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 53 is denied.

54. Plaintiff’s claims are typical of the claims of the other members of the Class. The factual and legal bases of Defendants’ liability to Plaintiff and the other members of the Class are the same: Defendants violated the TCPA by causing the cellular telephone number of each member of the Class, including Plaintiff, to be called using an automatic telephone dialing system and/or an artificial or prerecorded voice, without permission.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate’s telemarketing policies. Allstate also denies that this action is appropriate for class treatment. In addition, Paragraph 54 of the Amended Complaint

sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 54 is denied.

55. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that might conflict with the interests of the Class. Plaintiff, including through its principal, Mr. Heidarpour, is interested in pursuing its claims vigorously, and has retained counsel competent and experienced in class and complex litigation, including with regards to the claims alleged herein.

ANSWER: Allstate does not have sufficient knowledge or information to either admit or deny the allegations of Paragraph 55 and therefore denies them. Allstate denies that this action is appropriate for class treatment.

56. Class action treatment is superior to the alternatives for the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that numerous individual action would entail. There are, on information and belief, thousands of members of the Class, such that joinder of all members is impracticable.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate also denies that this action is appropriate for class treatment. In addition, Paragraph 56 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 56 is denied.

57. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate also denies that this

action is appropriate for class treatment. In addition, Paragraph 57 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 57 is denied.

58. Defendants have acted and failed to act on grounds generally applicable to Plaintiff and the other members of the Class, thereby making relief appropriate with respect to the Class as a whole. Prosecution of separate actions by individual members of the Class, should they even realize that their rights have been violated, would likely create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate also denies that this action is appropriate for class treatment. In addition, Paragraph 58 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 58 is denied.

59. The identity of the Class is, on information and belief, readily identifiable from Defendants' records.

ANSWER: Allstate denies all allegations that it engaged in any illegal telemarketing or is responsible for any alleged illegal telemarketing by Oh Agency or other third parties. By way of further answer, any telemarketing by Oh Agency, an independent contractor, was required to comply strictly with Allstate's telemarketing policies. Allstate also denies that this action is appropriate for class treatment. In addition, Paragraph 59 of the Amended Complaint sets out legal conclusions to which no response is required. To the extent a response is required, Paragraph 59 is denied.

**ALLSTATE'S ANSWER TO PLAINTIFF'S
PRAYER FOR RELIEF AND GENERAL DENIAL**

Allstate denies that Plaintiff is entitled to any relief, including the relief requested in the "WHEREFORE" clause of the Amended Complaint. Further, all allegations in the Amended Complaint that are not specifically and unequivocally admitted are hereby denied. Allstate reserves the right to amend or supplement this Answer and to raise any additional defenses that Allstate may become aware of through discovery or otherwise.

AFFIRMATIVE DEFENSES

1. The Court lacks subject matter jurisdiction over this action.
2. Plaintiff has not suffered any actual or concrete monetary, tangible or intangible injury and lacks standing to bring this action under Article III of the United States Constitution.
3. Plaintiff's individual claims are moot by virtue of Allstate's tender of complete relief and, therefore, the entire Amended Complaint must be dismissed.
4. Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.
5. On information and belief, defendant Oh Agency had prior express consent to call the regular user or subscriber of the telephone number that is at issue in this action, which consent was not revoked.
6. To the extent Plaintiff suffered damages, which Allstate expressly denies, Plaintiff failed to mitigate them.
7. Upon information and belief, Plaintiff lacks statutory standing to sue because it affirmatively sought to receive the cellular phone call that is the subject of the Amended Complaint for purposes of filing a putative class action.

8. Allstate did not in any manner proximately or legally cause, participate in, or contribute to, either by actions or inactions, any real or statutory damage, injury or loss allegedly suffered by Plaintiff on account of the cellular phone calls that are the subject of Plaintiff's Amended Complaint.

9. Any purported damages suffered by Plaintiff were caused in whole or in part by the legally and factually independent actions or omissions of third parties over whom Allstate has no control, authority or responsibility. The aforesaid actions or omissions of said third parties constitute an intervening or superseding cause of Plaintiff's alleged damages.

10. Plaintiff is barred and estopped from asserting the claims against Allstate, in whole or in part, because of Plaintiff's own actions or the actions of Plaintiff's agents.

11. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

12. Plaintiff's claims are barred, in whole or in part, by the doctrine of *in pari delicto*, or the doctrine of "equal fault."

13. Upon information and belief, Plaintiff was not the subscriber or customary user of the number at issue in this case during the relevant time periods.

14. At all relevant times, Allstate's policies, practices, and conduct with respect to telemarketing by its exclusive agents, who are independent contractors, have been in compliance with the provisions of the TCPA and all other applicable statutes, regulations, agency decisions, and interpretive case law.

15. To the extent Plaintiff claims or the alleged class includes persons who claim to have received disputed calls more than four years prior to the filing of Plaintiff's Amended Complaint, such claims are barred by the applicable statute of limitations.

16. The statutory damages scheme set forth in the TCPA, when enforced through the means of a class action, fails to account for the degree of reprehensibility of the defendant's

conduct, promotes an unconstitutionally excessive ratio between compensation for actual harm and punitive damages, disregards considerations of causation and fault, violates substantive and procedural due process, and is accordingly barred by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

17. Plaintiff and the putative class's claims fail because the TCPA violates the separation of powers or doctrine of non-delegation and does not fall within the enumerated powers of Congress under the Constitution.

18. The enforcement of statutory damage awards under the TCPA against a party solely on the basis that its name or trademark was used by a third party during a telephone call, without more, abridges freedom of speech and expression in violation of the First Amendment to the United States Constitution, is impermissibly vague and ambiguous, and violates substantive and procedural due process as guaranteed by the Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

19. All or part of Plaintiff's claims are barred by the principles set forth in *ACA Int'l v. FCC*, No. 15-1211 (D.C. Cir. March 16, 2018).

20. Attorneys' fees are not recoverable under the TCPA.

21. Plaintiff's claims and the putative Class's claims are barred or limited because they cannot satisfy some or all of the requirements for certifying and maintaining a class action under Federal Rule of Civil Procedure 23, as Plaintiff cannot demonstrate, *inter alia*:

- A. The numerosity and/or ascertainability of the purported class;
- B. The presence of questions of law or fact common to the putative class;
- C. That Plaintiff's claims are typical of those of the putative class;
- D. That Plaintiff and/or his counsel are adequate representatives of the putative class;

E. That individual questions of law and/or fact, including but not limited to questions concerning prior express consent, will not predominate over any common questions of law and/or fact which may be presented; and/or

F. That a class action is superior to other methods of adjudicating the matters in dispute.

22. Allstate reserves the right to add additional affirmative defenses as they become available.

WHEREFORE, Defendant Allstate Insurance Company respectfully requests that the Court enter a judgment in its favor and against Plaintiff, together with such other relief, including attorneys' fees and costs, as the Court deems just and proper.

Dated: March 20, 2018.

Respectfully submitted

Defendant Allstate Insurance Company

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CERTIFICATE OF SERVICE

I, Mark Hanover, an attorney, hereby certify that I have caused a copy of the foregoing **ANSWER AND AFFIRMATIVE DEFENSES OF DEFENDANT ALLSTATE INSURANCE COMPANY TO PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT** to be served upon all persons and entities registered and authorized to receive such service through the Court's Case Management/ Electronic Case Files (CM/ECF) system on March 20, 2018.

/s/ Mark Hanover
Mark Hanover