

**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 all
persons and entities similarly situated,
Plaintiffs,

v.

OH INSURANCE AGENCY and THE
ALLSTATE CORPORATION,
Defendants.

Case No.: 1:15-cv-09025

**OH INSURANCE AGENCY’S ANSWER AND AFFIRMATIVE DEFENSES TO
AMENDED CLASS ACTION COMPLAINT**

Defendant OH INSURANCE AGENCY (“OIA”), by and through its attorneys, Kaufman Dolowich & Voluck, LLP, in answer to Plaintiff ABANTE ROOTER AND PLUMBING, INC.’s (“Plaintiff”) Amended Class Action Complaint (“Complaint”), states 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: OIA admits that Plaintiff purports to bring this action asserting the claims alleged but denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief. OIA is without knowledge or information to confirm or deny the truth of the identity of the owner of Plaintiff; therefore, denies the same. OIA denies the remaining allegations 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 cites a regulation and statute which speak for themselves, and to which no answer is required. OIA denies any allegations contrary to the terms of the regulation and statute or which otherwise characterize or suggest that OIA failed to comply with such regulation and statute.

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: OIA denies the allegations contained in paragraph 3.

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: OIA denies the allegations contained in paragraph 4.

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.

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

ANSWER: OIA denies that it engaged in any illegal telemarketing. The remainder of the allegations in paragraph are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 5.

Parties

6. Plaintiff Abante is a California corporation.

ANSWER: Upon information and belief, OIA admits the allegations in paragraph 6.

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: OIA admits the allegations contained in paragraph 7.

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: Upon information and belief, OIA admits the allegations contained in paragraph 8.

Jurisdiction & 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: The allegations in paragraph 9 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained 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: The allegations in paragraph 10 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 10.

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: The allegations in paragraph 11 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 11.

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 cites a statute which speaks for itself, and to which no answer is required. To the extent that the allegations contained within paragraph 12 reference and characterize that statute or suggest that OIA failed to comply with said statute, OIA denies the allegations contained in paragraph 12.

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 cites statutes, regulations and a judicial opinion which speak for themselves, and to which no answer is required. To the extent that the allegations contained within paragraph 13 reference and characterize that statute, regulation or judicial opinion, or suggest that OIA failed to comply with any law or regulation, OIA denies the allegations contained in paragraph 13.

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 cites regulations which speak for themselves, and to which no answer is required. To the extent that the allegations contained within paragraph 14 reference and characterize those regulations, or suggest that OIA failed to comply with said regulations, OIA denies the allegations contained in paragraph 14.

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: The allegations in paragraph 15 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 15.

Factual Allegations Relating to Plaintiff

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

ANSWER: OIA admits the allegations contained in paragraph 16.

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

ANSWER: OIA denies the allegations contained in paragraph 17.

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

ANSWER: OIA admits only that it called a telephone number owned by Plaintiff. OIA is without knowledge or information to form a belief as to the truth or falsity of the allegation that Plaintiff's telephone number is a cellular telephone number. OIA denies the remaining allegations in paragraph 18.

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: OIA denies the allegations contained in paragraph 19.

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: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations set out in paragraph 20 and on that basis, denies the allegations in paragraph 20.

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: OIA denies the allegations contained in paragraph 21.

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

ANSWER: OIA admits the allegations in paragraph 22.

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: OIA denies that a second call was made from (888) 772-1946 on September 24, 2015. OIA denies the remaining allegations contained in paragraph 23.

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

ANSWER: OIA denies the allegations contained in paragraph 24.

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: OIA denies the allegations contained in paragraph 25.

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: The allegations in paragraph 26 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 26.

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: OIA admits only that Fred Heidarpour called Oh Insurance Agency and spoke with Josh Oh. OIA is without knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations set out in paragraph 27 and on that basis, denies the remaining allegations in paragraph 27.

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

ANSWER: OIA admits that Wendy Morales emailed Fred Heidarpour forms at his request. OIA denies that the emails were sent in “following up on the sales calls” but were at the express request of Plaintiff.

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](mailto:SarahStangl@allstate.com)

ANSWER: OIA states that the form is a written document which speaks for itself and is the best evidence of its contents, and to the extent that the allegations contained within paragraph 29 reference and characterize that written document, OIA denies any allegations inconsistent with said written document. OIA denies the remaining allegations contained in paragraph 29.

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: OIA states that the form is a written document which speaks for itself and is the best evidence of its contents, and to the extent that the allegations contained within paragraph 30 reference and characterize that written document, OIA denies any allegations inconsistent with said written document. OIA denies the remaining allegations contained in paragraph 30.

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

ANSWER: OIA denies the allegations contained in paragraph 31.

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: OIA denies the allegations contained in paragraph 32. Answering further, the only telephone call made by Mr. Heidarpour to OIA was to request a free quote for insurance and to request the proper forms that would allow him to obtain said quote.

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: OIA denies the allegations contained in paragraph 33.

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: The allegations in paragraph 34 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 34.

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: The allegations in paragraph 35 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 35.

Allstate's Liability for the Calls at Issue

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

ANSWER: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 36, and on that basis denies the allegations in paragraph 36.

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

ANSWER: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 37, and on that basis denies the allegations in paragraph 37.

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: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 38, and on that basis denies the allegations in paragraph 38.

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

ANSWER: OIA admits only that it engages in telemarketing to promote Allstate’s products. OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 39, and on that basis denies the allegations in paragraph 39.

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: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 40, and on that basis denies the allegations in paragraph 40.

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: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 41, and on that basis denies the allegations in paragraph 41.

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: OIA is without knowledge or information to form a belief as to Allstate's ability to control its agents. OIA denies the remaining allegations in paragraph 42.

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

ANSWER: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 43, and on that basis denies the allegations in paragraph 43.

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: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 44, and on that basis denies the allegations in paragraph 44.

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: The allegations in paragraph 45 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 45.

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

ANSWER: OIA denies the allegations contained in paragraph 46.

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

ANSWER: OIA is without knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 47, and on that basis denies the allegations in paragraph 47.

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

ANSWER: OIA denies the allegations contained in paragraph 48.

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: The allegations in paragraph 49 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 49.

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: The allegations in paragraph 50 are conclusions of law, to which no answer is required. To the extent an answer is required, OIA denies the allegations contained in paragraph 50.

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: OIA denies that a class is properly certifiable in this case under Rule 23 and denies that any alleged putative class members are similarly situated to Plaintiff or each other. OIA denies any remaining allegations in paragraph 51.

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: OIA denies the allegations contained in paragraph 52.

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: OIA denies the allegations contained in paragraph 53, including all allegations in subsections a. through d., denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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: OIA denies the allegations contained in paragraph 54, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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: OIA denies the allegations contained in paragraph 55, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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: OIA denies the allegations contained in paragraph 56, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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: OIA denies the allegations contained in paragraph 57, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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: OIA denies the allegations contained in paragraph 58, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

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

ANSWER: OIA denies the allegations contained in paragraph 59, denies that Plaintiff has properly alleged any claims or that Plaintiff is entitled to any relief, and further denies that a class is properly certifiable in this case under Rule 23.

AFFIRMATIVE DEFENSES

1. Plaintiff lacks standing to prosecute the claims alleged in the Complaint.
2. Plaintiff and the putative class members had an established business relationship with OIA.
3. The claims of Plaintiff and the putative class members are barred in whole or in part because OIA's conduct was in conformity with all applicable laws.

4. Plaintiff has not suffered any injury of any type or any actual damages and is not entitled to damages or injunctive or any other form of relief.

5. The damages plaintiff seeks are unconstitutionally punitive as they bear no relation to any actual damages plaintiff may have suffered.

6. Upon information and belief, Plaintiff failed to mitigate any damages and in fact affirmative sought to receive telemarketing calls from OIA and other entities for purposes of filing putative class actions.

7. The statutory damages scheme set forth in the TCPA is unconstitutionally excessive, and barred by the Fifth and/or Eighth Amendments to the Constitution, and violates substantive or procedural due process.

8. The TCPA is unconstitutional under the First Amendment to the United States Constitution.

9. Plaintiff and the putative class members' claims are barred, in whole or in part, by the doctrines of laches, estoppel, waiver, ratification and/or unclean hands.

10. OIA reserves the right to amend its Answer to add affirmative defenses as they may become available.

Dated: March 20, 2018

Respectfully submitted,

OH INSURANCE AGENCY

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