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11
12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 JENNY BROWN, on behalf of
herself and all others similarly
15 situated,

16 Plaintiff,

17 v.

18 DIRECTV, LLC, THE CMI
GROUP, INC, THE CMI GROUP
19 GP, LLC, and CREDIT
MANAGEMENT, LP,
20

21 Defendants.

Case No. 2:13-cv-01170-DMG-E

(PUTATIVE CLASS ACTION
COMPLAINT)

DIRECTV'S FIRST AMENDED
ANSWER TO PLAINTIFF'S FOURTH
AMENDED COMPLAINT

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1 Defendant DIRECTV, LLC (“DIRECTV”) hereby answers Plaintiff Jenny
2 Brown’s Fourth Amended Complaint (“FAC”).

3 **GENERAL STATEMENT**

4 To the extent that any heading within Plaintiff’s FAC constitutes an
5 allegation, that allegation is denied. Moreover, to the extent that any allegation in
6 the FAC refers to “Defendants” – presumably referring to DIRECTV and its prior
7 co-defendants The CMI Group, Inc., The CMI Group GP, LLC, and Credit
8 Management, LP (the “CMI Defendants”) – DIRECTV lacks sufficient information
9 to confirm or deny that allegation on behalf of any entity other than itself. As
10 Plaintiff has dismissed the other Defendants from this action, DIRECTV is the sole
11 remaining Defendant and answers in that capacity. *See* Joint Stipulation submitted
12 by Plaintiff and the CMI Defendants (Dkt. No. 142) (dismissing the CMI
13 Defendants). Moreover, the Subclass defined in the FAC does not appear to have
14 claims related to DIRECTV, but rather was focused on the dismissed CMI
15 Defendants, and is not related to the current action.

16 **ANSWER**

17 1. Paragraph 1 contains legal conclusions to which no response is
18 required. To the extent any statements in this Paragraph are considered factual
19 allegations, DIRECTV denies any factual allegations contained in Paragraph 1.

20 2. Paragraph 2 contains characterizations of a previous and wholly
21 unrelated matter amicably resolved by settlement between the Federal Trade
22 Commission (“FTC”) and DIRECTV. It is irrelevant and improper to include
23 Plaintiff’s misrepresentations of that matter here and no response is required, other
24 than to note that the cited Complaint was prepared and filed by the FTC in
25 December 2005 solely for purposes of effecting the previously negotiated
26 settlement, DIRECTV did not admit the truth of any of the allegations and the
27 allegations were made years before the applicable statute of limitations in this
28 litigation and are not factual statements made by Plaintiff. To the extent any

1 statements in this Paragraph are considered factual allegations made by Plaintiff,
2 DIRECTV denies them except to the extent clarified herein. DIRECTV denies any
3 other factual allegations contained in Paragraph 2.

4 3. Paragraph 3 contains characterizations of a previous and wholly
5 unrelated matter amicably resolved by settlement between the FTC and DIRECTV
6 in the form of a stipulated judgment with injunctive provisions. It is irrelevant and
7 improper to include Plaintiff's misrepresentations of that matter here and no
8 response is required, other than to note that a stipulated judgment entered into
9 without any finding of fault or admission of liability is not a factual statement made
10 by Plaintiff. To the extent any statements in this Paragraph are considered factual
11 allegations made by Plaintiff, DIRECTV denies them except to the extent clarified
12 herein. DIRECTV denies any other factual allegations contained in Paragraph 3.

13 4. Paragraph 4 contains legal conclusions to which no response is
14 required. To the extent any statements in this paragraph are considered factual
15 allegations, DIRECTV denies any factual allegations contained in Paragraph 4.

16 5. Paragraph 5 contains characterizations of Plaintiff's FAC to which no
17 response is required. To the extent any statements in this Paragraph are considered
18 factual allegations, DIRECTV denies any factual allegations contained in Paragraph
19 5.

20 6. Paragraph 6 contains allegations about this Court's jurisdiction. While
21 DIRECTV does not believe that Plaintiff's claims have merit, DIRECTV will not
22 contest that there is original subject matter jurisdiction under 28 U.S.C. §1331 over
23 claims asserted under the Telephone Consumer Protection Act ("TCPA") except as
24 to putative class members who entered into arbitration agreements with DIRECTV.

25 7. Paragraph 7 contains allegations about this Court's jurisdiction. While
26 DIRECTV does not believe that Plaintiff's claims have merit and does not believe
27 that Plaintiff's proposed classes can or should be certified, DIRECTV does not
28 contest that the putative classwide claims as alleged by Plaintiff could support

1 diversity jurisdiction under the Class Action Fairness Act (“CAFA”)—but
2 DIRECTV notes that because there is original jurisdiction for TCPA claims, any
3 questions under CAFA are moot.

4 8. Paragraph 8 contains allegations about venue. DIRECTV admits that
5 it conducts business in California and has its principal place of business in El
6 Segundo, California. DIRECTV lacks sufficient information to admit or deny the
7 remaining allegations in Paragraph 8 concerning the CMI Defendants.

8 9. DIRECTV lacks sufficient information to confirm or deny the
9 allegation contained in Paragraph 9, and on that basis denies the allegation.

10 10. DIRECTV admits the allegations contained in Paragraph 10.

11 11. DIRECTV admits the allegations contained in Paragraph 11.

12 12. DIRECTV is not certain which corporate entity Plaintiff speaks of in
13 Paragraph 12 when it refers to “DIRECTV” alone (which is defined as “DIRECTV,
14 LLC”), instead of DIRECTV, Inc. (the predecessor entity), and on that basis is not
15 able to admit or deny this allegation.

16 13. DIRECTV admits the allegations contained in Paragraph 13 insofar as
17 it assumed the liabilities of DIRECTV, Inc. as the successor company; however, to
18 the extent that this Paragraph makes an allegation that there is “liability for the
19 TCPA claims alleged herein”, DIRECTV denies that allegation.

20 14. DIRECTV lacks sufficient information to confirm or deny the
21 allegations contained in Paragraph 14 related to prior defendant The CMI Group,
22 Inc., and on that basis denies the allegations.

23 15. DIRECTV lacks sufficient information to confirm or deny the
24 allegations contained in Paragraph 15 related to prior defendant The CMI Group,
25 Inc., and on that basis denies the allegations.

26 16. DIRECTV lacks sufficient information to confirm or deny the
27 allegations contained in Paragraph 16 related to prior defendant The CMI Group
28 GP, LLC, and on that basis denies the allegations.

1 17. DIRECTV lacks sufficient information to confirm or deny the
2 allegations contained in Paragraph 17 related to prior defendant Credit
3 Management, LP, and on that basis denies the allegations.

4 18. DIRECTV lacks sufficient information to confirm or deny the
5 allegations contained in Paragraph 18 related to the CMI Defendants, and on that
6 basis denies the allegations.

7 19. DIRECTV lacks sufficient information to confirm or deny the
8 allegations contained in Paragraph 19 related to the CMI Defendants, and on that
9 basis denies the allegations.

10 20. The allegation that any of the CMI Defendants were collecting debts
11 “on behalf of” DIRECTV is a legal conclusion that requires no response; to the
12 extent it is considered a factual allegation, DIRECTV denies that allegation because
13 the CMI Defendants are independent third parties acting in and for themselves. As
14 for the remaining factual allegations made in this Paragraph relating to the
15 relationships between the CMI Defendants, DIRECTV lacks sufficient information
16 to confirm or deny the allegations contained in Paragraph 20, and on that basis
17 denies the allegations.

18 21. DIRECTV lacks sufficient information to confirm or deny the
19 allegations contained in Paragraph 21 related to the CMI Defendants, and on that
20 basis denies the allegations.

21 22. DIRECTV lacks sufficient information to confirm or deny the
22 allegations contained in Paragraph 22 related to the CMI Defendants, and on that
23 basis denies the allegations.

24 23. DIRECTV lacks sufficient information to confirm or deny the
25 allegations contained in Paragraph 23 related to the CMI Defendants, and on that
26 basis denies the allegations.

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1 24. DIRECTV lacks sufficient information to confirm or deny the
2 allegations contained in Paragraph 24 related to the CMI Defendants, and on that
3 basis denies the allegations.

4 25. Paragraph 25 contains a description of the TCPA to which no response
5 is required. To the extent any statements in this Paragraph are considered factual
6 allegations, DIRECTV admits that the primary purpose of the TCPA is to regulate
7 marketing and sales calls. DIRECTV denies any remaining factual allegations.

8 26. Paragraph 26 contains a description of the TCPA to which no response
9 is required. To the extent any statements in this Paragraph are considered factual
10 allegations, DIRECTV denies the allegations.

11 27. Paragraph 27 contains a description of the TCPA and purported
12 findings by the FCC to which no response is required. To the extent any statements
13 in this Paragraph are considered factual allegations, DIRECTV denies the
14 allegations.

15 28. Paragraph 28 contains a description of a FCC Declaratory Ruling to
16 which no response is required. To the extent any statements in this Paragraph are
17 considered factual allegations, DIRECTV denies the allegations.

18 29. Paragraph 29 contains a description of a FCC Declaratory Ruling to
19 which no response is required. To the extent any statements in Paragraph 29 are
20 considered factual allegations, DIRECTV denies the allegations.

21 30. Paragraph 30 contains legal conclusions to which no response is
22 required. To the extent any statements in this Paragraph are considered factual
23 allegations, DIRECTV denies the allegations.

24 31. DIRECTV admits that it enters into contracts with independent third-
25 party debt collectors. These collectors conduct their own businesses to earn
26 revenue by collecting debts consumers owe not only to DIRECTV but to many
27 other businesses as well. Third-party debt collectors are independent contractors
28 and DIRECTV denies that it “controls” or has the “right to control” these

1 businesses. Such companies are not permitted by contract and do not hold
2 themselves out as DIRECTV. DIRECTV admits that it supplies account
3 information to third-party collectors, including the amount of debt and the contact
4 information that the subscriber provided to DIRECTV during the course of the
5 parties' relationship, but denies that DIRECTV "supplies" any other telephone
6 numbers. DIRECTV denies any remaining allegations contained in Paragraph 31
7 that it has not specifically addressed in this paragraph.

8 32. DIRECTV lacks sufficient information to confirm or deny the
9 allegations contained in Paragraph 32 related to the CMI Defendants, and on that
10 basis denies the allegations.

11 33. The allegation that calls placed by a third-party debt collector such as
12 Credit Management, LP, were placed "on behalf of" DIRECTV is a legal
13 conclusion that requires no response; to the extent it is considered a factual
14 allegation, DIRECTV denies the allegation. DIRECTV lacks sufficient information
15 to confirm or deny the remaining allegations in paragraph 33 concerning the CMI
16 Defendants, and on that basis denies such allegations.

17 34. DIRECTV denies the allegation contained in Paragraph 34.

18 35. The allegation that calls placed be a third-party debt collector such as
19 Credit Management, LP, were placed "on behalf of" DIRECTV is a legal
20 conclusion that requires no response; to the extent it is considered a factual
21 allegation, DIRECTV denies that allegation. DIRECTV admits that it is aware that
22 some third-party collectors choose at times to use pre-recorded messaging in
23 making collections calls. DIRECTV denies any remaining allegations contained in
24 Paragraph 35, and reiterates that it lacks sufficient information to confirm or deny
25 the allegations concerning the CMI Defendants and on that basis denies such
26 allegations.

27 36. The allegation that calls placed be a third-party debt collector such as
28 Credit Management, LP, were placed "on behalf of" DIRECTV is a legal

1 conclusion that requires no response; to the extent it is considered a factual
2 allegation, DIRECTV denies that allegation. DIRECTV denies any remaining
3 allegations contained in Paragraph 36, and reiterates that it lacks sufficient
4 information to confirm or deny the allegations concerning the CMI Defendants and
5 on that basis denies such allegations.

6 37. Paragraph 37 contains a legal conclusion, not factual allegations, to
7 which no response is required. To the extent that a response is required, DIRECTV
8 denies the allegations in Paragraph 37.

9 38. DIRECTV admits that some contracts with certain third-party
10 collectors may address the use of predictive dialers, but denies that there is any
11 requirement that dialers be used in violation of any applicable laws. Contracts
12 require third-party collectors to comply with all applicable laws. DIRECTV denies
13 any remaining allegations contained in Paragraph 38.

14 39. DIRECTV denies the allegation contained in Paragraph 39.

15 40. DIRECTV admits that it is aware that third-party collectors may at
16 times have used ATDS technologies in making some collections calls. DIRECTV
17 denies any remaining allegations contained in Paragraph 40, and reiterates that it
18 lacks sufficient information to confirm or deny the allegations concerning the CMI
19 Defendants and on that basis denies such allegations.

20 41. Paragraph 41 does not contain any factual allegations made by
21 Plaintiff, but rather asserts that “on information and belief” certain events occurred.
22 DIRECTV is not required to respond to such allegations made without factual
23 knowledge. Further, Paragraph 41 contains legal conclusions to which no response
24 is required. To the extent any statements in this Paragraph are considered factual
25 allegations, DIRECTV denies any factual allegations contained in Paragraph 41.

26 42. The allegation that calls placed by a third-party debt collector such as
27 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
28 conclusion that requires no response; to the extent it is considered a factual

1 allegation, DIRECTV denies that allegation. DIRECTV lacks sufficient
2 information to confirm or deny the allegations contained in Paragraph 42
3 concerning the CMI Defendants, and on that basis denies the allegations.

4 43. The allegation that calls placed by a third-party debt collector such as
5 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
6 conclusion that requires no response; to the extent it is considered a factual
7 allegation, DIRECTV denies that allegation. DIRECTV lacks sufficient
8 information to confirm or deny the allegations contained in Paragraph 43
9 concerning the CMI Defendants, and on that basis denies the allegations.

10 44. The allegation that calls placed by a third-party debt collector such as
11 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
12 conclusion that requires no response; to the extent it is considered a factual
13 allegation, DIRECTV denies that allegation. Further, Paragraph 44 does not
14 contain any factual allegations made by Plaintiff, but rather asserts that “on
15 information and belief” certain events occurred. DIRECTV is not required to
16 respond to such allegations made without factual knowledge. In any case,
17 DIRECTV lacks sufficient information to confirm or deny the allegations contained
18 in this Paragraph concerning the CMI Defendants, and on that basis denies the
19 allegations.

20 45. DIRECTV admits the allegation contained in Paragraph 45.

21 46. DIRECTV lacks sufficient information to confirm or deny the
22 allegations contained in Paragraph 46, and on that basis denies these allegations.

23 47. DIRECTV lacks sufficient information to confirm or deny the
24 allegations contained in Paragraph 47, and on that basis denies these allegations.

25 48. DIRECTV denies that it placed any calls to Plaintiff in 2011 or that
26 any such calls were placed on its behalf. As for the remaining factual allegations
27 contained in Paragraph 48, DIRECTV lacks sufficient information to confirm or
28 deny the allegations and on that basis denies these allegations.

1 49. DIRECTV lacks sufficient information to confirm or deny the
2 allegations contained in Paragraph 49, and on that basis denies the allegations.

3 50. DIRECTV admits the allegations contained in Paragraph 50.

4 51. The allegation that calls placed by a third-party debt collector such as
5 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
6 conclusion that requires no response; to the extent it is considered a factual
7 allegation, DIRECTV denies that allegation. DIRECTV lacks sufficient
8 information to confirm or deny the remaining allegations contained in Paragraph
9 51, and on that basis denies the allegations.

10 52. The allegation that calls placed by a third-party debt collector such as
11 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
12 conclusion that requires no response; to the extent it is considered a factual
13 allegation, DIRECTV denies that allegation. DIRECTV lacks sufficient
14 information to confirm or deny the remaining allegations contained in Paragraph
15 52, and on that basis denies the allegations.

16 53. The allegation that calls placed by a third-party debt collector such as
17 Credit Management, LP, were placed “on behalf of” DIRECTV is a legal
18 conclusion that requires no response; to the extent it is considered a factual
19 allegation, DIRECTV denies that allegation. DIRECTV lacks sufficient
20 information to confirm or deny the remaining allegations contained in Paragraph
21 53, and on that basis denies the allegations.

22 **CLASS ALLEGATIONS**

23 54. While DIRECTV does not dispute that Plaintiff has asserted putative
24 classwide claims in her FAC, DIRECTV denies that Plaintiff’s claims are proper
25 for classwide treatment.

26 55. Paragraph 55 contains a characterization of her proposed Class; no
27 response is required. However, DIRECTV reiterates that Plaintiff’s claims are not
28 proper for classwide treatment.

1 56. Paragraph 56 contains a characterization of her proposed Subclass that
2 appears to only relate to the CMI Defendants no longer in this action; no response
3 is required. However, DIRECTV reiterates that Plaintiff’s claims are not proper for
4 classwide treatment.

5 57. DIRECTV denies that it has made any representations to Plaintiff that
6 would allow Plaintiff to “reasonably believe” that the Class and the Subclass have
7 memberships in the tens of thousands; DIRECTV has no such knowledge and
8 denies the factual allegations made in Paragraph 57. DIRECTV notes that the
9 Subclass discussed in this Paragraph does not appear to have claims related to
10 DIRECTV, but rather was focused on the dismissed CMI Defendants.

11 58. DIRECTV denies the allegation contained in Paragraph 58.
12 DIRECTV notes that the Subclass discussed in this Paragraph does not appear to
13 have claims related to DIRECTV, but rather was focused on the dismissed CMI
14 Defendants.

15 59. DIRECTV denies that it placed illegal calls to Plaintiff or other
16 putative class members, or that any such calls were placed on its behalf. DIRECTV
17 lacks knowledge as to the other factual allegations made in Paragraph 59, and on
18 that basis, denies them. DIRECTV notes that the Subclass discussed in this
19 Paragraph does not appear to have claims related to DIRECTV, but rather was
20 focused on the dismissed CMI Defendants.

21 60. Paragraph 60 contains a characterization of the FAC to which no
22 response is required.

23 61. Paragraph 61 contains legal conclusions, not factual allegations, to
24 which no response is required. To the extent a response is required, DIRECTV
25 denies the allegations in Paragraph 61. DIRECTV further denies that class
26 certification is proper. DIRECTV notes that the Subclass discussed in this
27 Paragraph does not appear to have claims related to DIRECTV, but rather was
28 focused on the dismissed CMI Defendants.

1 62. Paragraph 62 (including its subparts a through f) contains legal
2 conclusions, not factual allegations, to which no response is required. To the extent
3 a response is required, DIRECTV denies the allegations in Paragraph 62 and all
4 subparts. DIRECTV further denies that class certification is proper. DIRECTV
5 notes that the Subclass discussed in this Paragraph does not appear to have claims
6 related to DIRECTV, but rather was focused on the dismissed CMI Defendants.

7 63. Paragraph 63 contains legal conclusions to which no response is
8 required. To the extent a response is required, DIRECTV denies the allegations in
9 Paragraph 63. Moreover, DIRECTV lacks sufficient information to confirm or
10 deny Plaintiff's allegations in Paragraph 63, and on that basis denies the allegations
11 contained in Paragraph 63. DIRECTV further denies that class certification is
12 proper. DIRECTV notes that the Subclass discussed in this Paragraph does not
13 appear to have claims related to DIRECTV, but rather was focused on the
14 dismissed CMI Defendants.

15 64. Paragraph 64 contains legal conclusions to which no response is
16 required. To the extent a response is required, DIRECTV denies the allegations in
17 Paragraph 64. DIRECTV further denies that class certification is proper.

18 65. DIRECTV denies that class certification is proper and denies that
19 "classwide relief is essential to compel [DIRECTV] to comply with the TCPA and
20 the Rules." The remainder of Paragraph 65 contains legal conclusions to which no
21 response is required. To the extent a response is required, DIRECTV denies the
22 remaining allegations in Paragraph 65. DIRECTV notes that the Subclass
23 discussed in this Paragraph does not appear to have claims related to DIRECTV,
24 but rather was focused on the dismissed CMI Defendants.

25 66. Paragraph 66 contains legal conclusions to which no response is
26 required. To the extent a response is required, DIRECTV denies the allegations in
27 Paragraph 66. DIRECTV further denies that class certification is proper.
28 Additionally, the second sentence of Paragraph 66 does not contain any factual

1 allegations made by Plaintiff, but rather asserts that “on information and belief”
2 certain events will continue to occur. DIRECTV is not required to respond to such
3 allegations made without factual knowledge, but denies such allegations
4 nevertheless.

5 **CAUSES OF ACTION**

6 67. DIRECTV incorporates its responses to all previous Paragraphs.

7 68. Paragraph 68 contains legal conclusions to which no response is
8 required. To the extent a response is required, DIRECTV denies the allegations in
9 Paragraph 68. DIRECTV further denies that class certification is proper.

10 69. The allegations in Paragraph 69 contain legal conclusions to which no
11 response is required. To the extent any statements in this Paragraph are considered
12 factual allegations, DIRECTV denies those factual allegations. Furthermore,
13 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
14 to judgment in their favor on any of their claims, and denies that they are entitled to
15 any of the relief Plaintiff requests.

16 70. The allegations in Paragraph 70 contain legal conclusions to which no
17 response is required. To the extent any statements in this Paragraph are considered
18 factual allegations, DIRECTV denies those factual allegations. Furthermore,
19 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
20 to judgment in their favor on any of their claims, and denies that they are entitled to
21 any of the relief Plaintiff requests.

22 71. The allegations in Paragraph 71 contain legal conclusions to which no
23 response is required. To the extent any statements in this Paragraph are considered
24 factual allegations, DIRECTV denies those factual allegations. Furthermore,
25 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
26 to judgment in their favor on any of their claims, and denies that they are entitled to
27 any of the relief Plaintiff requests.

28 72. DIRECTV incorporates its responses to all previous Paragraphs.

1 73. Paragraph 73 contains legal conclusions to which no response is
2 required. To the extent a response is required, DIRECTV denies the allegations in
3 Paragraph 73. DIRECTV further denies that class certification is proper.

4 74. The allegations in Paragraph 74 contain legal conclusions to which no
5 response is required. To the extent any statements in this Paragraph are considered
6 factual allegations, DIRECTV denies those factual allegations. Furthermore,
7 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
8 to judgment in their favor on any of their claims, and denies that they are entitled to
9 any of the relief Plaintiff requests.

10 75. The allegations in Paragraph 75 contain legal conclusions to which no
11 response is required. To the extent any statements in this Paragraph are considered
12 factual allegations, DIRECTV denies those factual allegations. Furthermore,
13 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
14 to judgment in their favor on any of their claims, and denies that they are entitled to
15 any of the relief Plaintiff requests.

16 76. The allegations in Paragraph 76 contain legal conclusions to which no
17 response is required. To the extent any statements in this Paragraph are considered
18 factual allegations, DIRECTV denies those factual allegations. Furthermore,
19 DIRECTV denies that Plaintiff and/or members of her proposed classes are entitled
20 to judgment in their favor on any of their claims, and denies that they are entitled to
21 any of the relief Plaintiff requests.

22 **DIRECTV'S AFFIRMATIVE DEFENSES TO THE COMPLAINT**

23 By setting forth these affirmative defenses, DIRECTV does not assume the
24 burden of proving any fact, issue, or element of a claim for relief where such
25 burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended to
26 be construed as an acknowledgement that any particular issue or subject matter is
27 relevant to Plaintiff's allegations. Nor shall anything stated or unstated constitute
28 an admission of any kind.

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FIRST AFFIRMATIVE DEFENSE

(Failure To State A Claim)

The FAC fails to state sufficient facts to constitute a cause of action against DIRECTV.

SECOND AFFIRMATIVE DEFENSE

(Compliance With Applicable Law)

Plaintiff's claims are barred because DIRECTV's conduct is not unlawful in that DIRECTV complies with applicable statutes and regulations.

THIRD AFFIRMATIVE DEFENSE

(Consent)

Plaintiff's and/or putative class members' claims are barred because they consented to any calls that they allegedly received.

FOURTH AFFIRMATIVE DEFENSE

(Established Business Relationship)

Plaintiff's and/or putative class members' claims are barred because they had an established business relationship with DIRECTV and/or others.

FIFTH AFFIRMATIVE DEFENSE

(Injury Caused By Third Parties)

Plaintiff's claims against DIRECTV are barred because any harm allegedly suffered by Plaintiff was caused and/or contributed to by third parties over whom DIRECTV has no control with respect to the time, means, method, or manner by which they conduct business or personal affairs.

SIXTH AFFIRMATIVE DEFENSE

(Not Willful and/or Knowing)

Plaintiff's claims are barred because DIRECTV did not engage in willful and/or knowing misconduct.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Standing)

1 Plaintiff and/or her putative class members lack standing to assert the claims
2 alleged in the Complaint.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **(Good Faith Belief and Conduct)**

5 The acts and statements of DIRECTV were fair and reasonable and were
6 performed in good faith based on all the relevant facts known to DIRECTV.
7 DIRECTV acted with a good faith belief that it had good cause and/or a legitimate
8 business reason to act as it did and did not directly or indirectly perform any acts
9 that would constitute a violation of Plaintiff's rights. As a consequence, Plaintiff is
10 not entitled to any damages whatsoever.

11 **NINTH AFFIRMATIVE DEFENSE**

12 **(Statute of Limitations)**

13 Plaintiff's claims are barred in part or in whole by the statute of limitations
14 applicable to her action.

15 **TENTH AFFIRMATIVE DEFENSE**

16 **(Mootness)**

17 Plaintiff's claims are moot.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 **(Estoppel)**

20 Plaintiff's claims are barred in part or in whole by the doctrine of estoppel.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(Waiver)**

23 Plaintiff's claims are barred in part or in whole by the doctrine of waiver.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 **(Unclean Hands)**

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

28 **FOURTEENTH AFFIRMATIVE DEFENSE**

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(Failure to Mitigate)

Plaintiff failed to mitigate the alleged damages (if any) and any recovery by Plaintiff must be diminished or barred by reason thereof.

FIFTEENTH AFFIRMATIVE DEFENSE

(Class Certification Improper)

Class certification of this suit is improper, and thus class certification should be denied and all references to a class action stricken from Plaintiff’s FAC.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unique Affirmative Defenses)

DIRECTV has unique affirmative defenses applicable to different putative members of Plaintiff’s proposed classes, including defenses of arbitration and class waiver. DIRECTV reserves the right to assert such additional affirmative defenses as the need arises, insofar as class certification has not been granted and is not appropriate in this case.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Mandatory Arbitration)

All the claims, in whole or in part, of one or more members of the putative class are subject to mandatory arbitration and a class waiver because those putative class member are customers of DIRECTV or one of its affiliates and agreed to terms of service that include an arbitration agreement and a class waiver.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Reservation of Other Affirmative Defenses)

DIRECTV lacks sufficient information of all the facts and evidence surrounding the subject incident and is therefore unable to ascertain at this time any additional affirmative defenses which DIRECTV may have. Therefore, DIRECTV expressly reserves the right to amend this Answer to assert such other affirmative defenses as may become apparent subsequent to the filing of this Answer, whether in discovery, at trial, or otherwise.

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DIRECTV’S PRAYER FOR RELIEF

WHEREFORE, DIRECTV respectfully requests that this Court:

1. Dismiss Plaintiff’s FAC with prejudice as to DIRECTV;
2. Order that Plaintiff take nothing by reason of the FAC, that Plaintiff is entitled to no relief, and that judgment be rendered in favor of DIRECTV;
3. Award DIRECTV its costs and expenses incurred in connection with this action; and
4. Grant DIRECTV such other relief as the Court deems proper.

Dated: August 6, 2018

SNELL AND WILMER, LLP

By: /s/ Becca Wahlquist
Becca Wahlquist
Attorneys for DIRECTV, LLC

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PROOF OF SERVICE

I, Becca Wahlquist, declare as follows:

I am employed in Los Angeles County, Los Angeles, California. I am over the age of eighteen years and not a party to this action. My business address is Snell & Wilmer L.L.P., 350 S. Grand Avenue, Suite 3100, Los Angeles, California 90071. On August 6, 2018, I served the within:

DIRECTV’S FIRST AMENDED ANSWER TO PLAINTIFF’S FOURTH AMENDED COMPLAINT

on the interested parties in this action, including those addressed as follows:

- **Michael Joseph Boyle , Jr**
mboyle@meyerwilson.com
- **Alexander H Burke**
ABurke@BurkeLawLLC.com,
- **Douglas I Cuthbertson**
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(BY ELECTRONIC MAIL) By transmitting such document(s) electronically via the Central District of California’s CM/ECF system, to the persons at the electronic mail addresses listed above.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on August 6, 2018, at Los Angeles, California.

/s/ Becca Wahlquist

Becca Wahlquist