

The Honorable John C. Coughenour

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

KELLY USANOVIC, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

EXP REALTY, LLC, a Washington limited
liability company,

Defendant.

Case No. 2:23-cv-00687-JCC

**DEFENDANT EXP REALTY, LLC'S
ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S CLASS
ACTION COMPLAINT**

Defendant eXp Realty, LLC ("eXp") answers and pleads its affirmative defenses in
response to Plaintiff's Class Action Complaint ("Complaint") as set forth below:

ANSWER

1. eXp admits that eXp Realty LLC is a real estate brokerage.

2. eXp answers that the website identified in footnote 1 speaks for itself and denies
any allegations contained in Paragraph 2 of the Complaint that are inconsistent therewith. eXp
further admits that optional trainings and support are available to real estate agents but denies that
it promotes cold calling consumers with expired real estate listings in a manner that violates the
TCPA. eXp also denies that it is liable for the actions of independently contracted real estate
agents. eXp denies any remaining allegations of Paragraph 2 of the Complaint.

1 3. eXp is without knowledge and information sufficient to form a belief about the truth
2 of the allegations contained in Paragraph 3 of the Complaint, and therefore, denies the same. eXp
3 also denies that violated the TCPA or that it is liable for the actions of independently contracted
4 real estate agents.

5 4. eXp admits that Plaintiff purports to bring this action for alleged violations of the
6 Telephone Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), but denies that it violated the
7 TCPA, denies that it is liable to the Plaintiff or the putative class members, and denies that Plaintiff
8 has suffered any damages as a result of eXp’s alleged actions or omissions. eXp denies any
9 remaining allegations of Paragraph 4 of the Complaint.

10 5. eXp lacks information sufficient to admit or deny the information contained in
11 Paragraph 5 of the Complaint, and therefore denies the same.

12 6. eXp admits that eXp is a Washington limited liability company with an office
13 address in Bellingham, Washington, but denies any remaining allegations of Paragraph 6 of the
14 Complaint.

15 7. eXp denies that subject matter jurisdiction exists and denies any remaining
16 allegations of Paragraph 7 of the Complaint.

17 8. eXp denies that personal jurisdiction exists and denies any remaining allegations
18 of Paragraph 8 of the Complaint.

19 9. eXp denies that venue in this District is proper and denies any remaining
20 allegations of Paragraph 7 of the Complaint.

21 10. eXp admits that optional training is available to its independently contracted real
22 estate agents and denies any remaining allegations of Paragraph 10 of the Complaint. eXp also
23 denies that it is liable for the actions of independently contracted real estate agents.
24

25 11. eXp denies that it promoted calling expired listings in a manner that violates the
26 TCPA and denies any remaining allegations of Paragraph 11 of the Complaint. eXp also denies
27

1 that it is liable for the actions of independently contracted real estate agents.

2 12. eXp admits that the term “expired listing” refers to a property that has been on the
3 market for a period of time without being sold and thus the listing agreement with the real estate
4 agent has expired. eXp lacks information sufficient to admit or deny the remaining information
5 contained in Paragraph 12 of the Complaint, and therefore denies the same.
6

7 13. eXp lacks information sufficient to admit or deny the information contained in
8 Paragraph 13 of the Complaint, and therefore denies the same.

9 14. eXp lacks information sufficient to admit or deny the information contained in
10 Paragraph 14 of the Complaint, and therefore denies the same. eXp also denies that it violated
11 the TCPA and that it is liable for the actions of independently contracted real estate agents.
12

13 15. eXp lacks information sufficient to admit or deny the information contained in
14 Paragraph 15 of the Complaint, and therefore denies the same. eXp also denies that it violated
15 the TCPA or that it is liable for the actions of independently contracted real estate agents.

16 16. eXp lacks information sufficient to admit or deny the information contained in
17 Paragraph 16 of the Complaint, and therefore denies the same. eXp also denies that it violated
18 the TCPA and that it is liable for the actions of independently contracted real estate agents.

19 17. eXp denies that it promoted calling expired listings in a manner that violates the
20 TCPA. eXp lacks information sufficient to admit or deny the remaining information contained
21 in Paragraph 17 of the Complaint, and therefore denies the same. eXp also denies that it is liable
22 for the actions of independently contracted real estate agents.
23

24 18. eXp admits that generally it receives a commission from a successful transaction.
25 eXp denies that it violated the TCPA or that it is liable for the actions of independently contracted
26 real estate agents. eXp denies the remaining allegations of Paragraph 18 of the Complaint.
27

19. eXp lacks information sufficient to admit or deny the information contained in

Paragraph 19 of the Complaint, and therefore denies the same. eXp denies that it violated the TCPA or that it is liable for the actions of independently contracted real estate agents.

20. eXp lacks information sufficient to admit or deny the information contained in Paragraph 20 of the Complaint, and therefore denies the same.

21. eXp lacks information sufficient to admit or deny the information contained in Paragraph 21 of the Complaint, and therefore denies the same.

22. eXp lacks information sufficient to admit or deny the information contained in Paragraph 22 of the Complaint, and therefore denies the same.

23. eXp lacks information sufficient to admit or deny the information contained in Paragraph 23 of the Complaint, and therefore denies the same.

24. eXp lacks information sufficient to admit or deny the information contained in Paragraph 24 of the Complaint, and therefore denies the same.

25. eXp lacks information sufficient to admit or deny the information contained in Paragraph 25 of the Complaint, and therefore denies the same.

26. eXp states that its website speaks for itself and denies any allegations contained in Paragraph 26 of the Complaint that are inconsistent therewith. eXp denies any remaining allegations of Paragraph 26.

27. eXp lacks information sufficient to admit or deny the information contained in Paragraph 27 of the Complaint, and therefore denies the same.

28. eXp states that its website and the Nevada real estate licensing website speak for themselves and denies any allegations contained in Paragraph 28 of the Complaint that are inconsistent therewith. eXp lacks information sufficient to admit or deny the remaining allegations in Paragraph 28, and therefore denies the same.

29. eXp lacks information sufficient to admit or deny the information contained in

Paragraph 29 of the Complaint, and therefore denies the same.

30. eXp lacks information sufficient to admit or deny the information contained in Paragraph 30 of the Complaint, and therefore denies the same.

31. eXp lacks information sufficient to admit or deny the information contained in Paragraph 31 of the Complaint, and therefore denies the same.

32. eXp states that its website speaks for itself and denies any allegations contained in Paragraph 32 of the Complaint that are inconsistent therewith. eXp denies any remaining allegations of Paragraph 32.

33. eXp is without knowledge and information sufficient to form a belief about the truth of the allegations contained in Paragraph 33 of the Complaint, and therefore, denies the same.

34. eXp is without knowledge and information sufficient to form a belief about the truth of the allegations contained in Paragraph 34 of the Complaint, and therefore, denies the same.

35. eXp states that its website speaks for itself and denies any allegations contained in Paragraph 35 of the Complaint that are inconsistent therewith. eXp denies any remaining allegations of Paragraph 35.

36. eXp is without knowledge and information sufficient to form a belief about the truth of the allegations contained in Paragraph 36 of the Complaint, and therefore, denies the same.

37. eXp denies the allegations contained in Paragraph 37 of the Complaint.

38. eXp admits that Plaintiff purports to bring an action individually and as a class action on behalf of consumers similarly situated, but denies that the proposed class is suitable for certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled

1 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
2 of Paragraph 38 of the Complaint.

3 39. eXp admits that Plaintiff purports to bring an action individually and as a class
4 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
5 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
6 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
7 of Paragraph 39 of the Complaint.
8

9 40. eXp admits that Plaintiff purports to bring an action individually and as a class
10 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
11 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
12 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
13 of Paragraph 40 of the Complaint.
14

15 41. eXp admits that Plaintiff purports to bring an action individually and as a class
16 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
17 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
18 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
19 of Paragraph 41 of the Complaint.
20

21 42. eXp admits that Plaintiff purports to bring an action individually and as a class
22 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
23 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
24 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
25 of Paragraphs 42 and Subparagraphs 42(a)–(d) of the Complaint.

26 43. eXp admits that Plaintiff purports to bring an action individually and as a class
27 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for

1 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
2 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
3 of Paragraph 43 of the Complaint.

4 44. eXp admits that Plaintiff purports to bring an action individually and as a class
5 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
6 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
7 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
8 of Paragraph 44 of the Complaint.

9 45. eXp admits that Plaintiff purports to bring an action individually and as a class
10 action on behalf of consumers similarly situated, but denies that the proposed class is suitable for
11 certification pursuant to Fed. R. Civ. P. 23, and denies that Plaintiff or the putative class is entitled
12 to the damages claimed or relief sought in the Complaint. eXp denies any remaining allegations
13 of Paragraph 45 of the Complaint.

14 46. eXp repeats its answers to paragraphs 1-45 above as though fully herein.

15 47. eXp answers that 47 C.F.R. § 64.1200(c) of the TCPA speaks for itself and denies
16 any allegations contained in Paragraph 47 of the Complaint that are inconsistent therewith. eXp
17 denies that it violated the TCPA.

18 48. eXp answers that 47 U.S.C. § 227(c) of the TCPA speaks for itself and denies any
19 allegations contained in Paragraph 48 of the Complaint that are inconsistent therewith. eXp
20 denies that it violated the TCPA.

21 49. eXp denies the allegations contained in Paragraph 49 of the Complaint.

22 50. eXp denies the allegations contained in Paragraph 50 of the Complaint.

23 51. eXp denies the allegations contained in Paragraph 51 of the Complaint.

24 52. eXp answers that 47 U.S.C. § 227(c)(5) of the TCPA speak for itself and denies

any allegations contained in Paragraph 52 of the Complaint that are inconsistent therewith. eXp denies that it violated the TCPA and denies that Plaintiff or the putative class members are entitled to the relief sought.

RESPONSE TO PRAYER FOR RELIEF: This paragraph constitutes Plaintiff's request for relief to which no response is required. To the extent a response is required, eXp denies that Plaintiff is entitled to the relief sought.

AFFIRMATIVE DEFENSES

Without conceding any applicable burden of proof, eXp alleges the following affirmative defenses to the claims set forth in the Complaint.

1. Plaintiff fails to state a claim upon which relief can be granted.

2. Plaintiff fails to allege facts establishing that eXp is vicariously liable for the actions of independently contracted real estate agents under any vicarious liability theory, including actual authority, apparent authority, or ratification.

3. Plaintiff and the putative class members have not alleged or suffered a concrete and particularized harm or injury and, therefore, lacks standing under Article III to pursue a claim.

4. Plaintiff lacks statutory standing under Section 227(b) of the TCPA to bring this action and to represent any purported class because she is not within the TCPA's protected zone of interest.

5. Plaintiff's and the putative class members' claims fail or otherwise are barred, in whole or in part, because any alleged injuries were not caused by eXp, but were caused by negligent or intentional acts or omissions of Plaintiff, the putative class members, or third parties, or were caused by superseding or intervening events outside eXp's control.

6. Plaintiff's and the putative class members' claims are barred, in whole or in part, because they provided prior express invitation or permission to receive the alleged calls at issue in

1 the Complaint.

2 7. Plaintiff's and the putative class members' claims are barred, in whole or in part,
3 because an established business relationship exists between the Plaintiff and the putative class
4 members and eXp.

5 8. Plaintiff's and the putative class members' claims are barred, in whole or in part,
6 as a result of their failure to mitigate their alleged damages, if any, and any recovery should be
7 reduced in proportion to their failure to mitigate such damages.
8

9 9. Plaintiff's and the putative class members' claims are barred, in whole or in part,
10 because eXp established and implemented reasonable practices, and procedures to effectively
11 prevent violations of the TCPA.

12 10. To the extent there was any violation of the TCPA, which eXp denies, such
13 violation(s) were not knowing and willful because eXp did not willfully or knowingly contact
14 Plaintiff or putative class members that were registered on the DNC because eXp acted in good
15 faith and without malice, or because eXp established and implemented reasonable practices, and
16 procedures to effectively prevent violations of the TCPA.
17

18 11. Plaintiff's damages, if any, and none being admitted, were not caused by eXp, but
19 by another person(s) or entity, including Plaintiff, for whom eXp is not responsible and over whom
20 eXp exercises no control.
21

22 12. Application of the TCPA, as interpreted by the FCC, violates the First Amendment
23 of the U.S. Constitution because such application relies upon content-based restrictions of
24 protected speech.

25 13. The TCPA is unconstitutionally vague as applied in this case because the
26 restrictions imposed by the TCPA do not give adequate notice of the conduct that is prohibited.
27

14. The amount of damages prescribed by the TCPA statute are so severe and

oppressive as to be wholly disproportionate to the offense and obviously unreasonable allowing for the Court to reduce the damage award, if any. Thus, as applied in this case any award of damages should be reduced to comport with due process.

15. eXp is without sufficient knowledge or information to form a belief as to whether it may have additional, but yet unstated, affirmative defenses available to it, and accordingly, eXp reserves the right to assert additional defenses in the event discovery indicates that the same would be appropriate.

WHEREFORE, eXp respectfully requests that this Court enter judgment in eXp's favor, dismiss the Complaint with prejudice, award eXp all costs and fees incurred herein, and order such further relief this Court deems just, necessary, and appropriate.

Dated: July 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the United States of America that on this date, the foregoing document was filed electronically with the Court and thus served simultaneously upon all counsel of record.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July 19, 2023.



Rondi A. Greer