

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**TABATHA LEE,
individually and on behalf of
all others similarly situated,**

Plaintiff,

vs.

JDC HEALTHCARE, PLLC,

Defendant.

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Civil Action No. 3:23-cv-01134-C

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF’S COMPLAINT**

Defendant JDC Healthcare Management LLC, incorrectly identified in the Complaint as “JDC Healthcare, PLLC” (“JDC Healthcare”), by and through undersigned counsel, submits this Answer and Affirmative Defenses to Plaintiff Tabatha Lee’s (“Plaintiff”) Complaint. All allegations not expressly admitted are hereby denied. Subject to these denials and the affirmative defenses stated herein, JDC Healthcare answers as follows:

NATURE OF THE ACTION

1. Paragraph 1 contains Plaintiff’s characterization of this action to which no response is required. To the extent a response is deemed to be required, JDC Healthcare admits Plaintiff purports to bring this action under the Telephone Consumer Protection Act of 1991 (“TCPA”), codified at 47 U.S.C. § 227, *et. seq.*, but denies any violation of the TCPA, denies Plaintiff’s individual claim against JDC Healthcare is representative of any other individual’s claim, denies that Plaintiff or any putative class have a right to any damages, legal or equitable remedies, and denies any class exists or can be properly certified in this case.

2. JDC Healthcare denies the allegations contained in Paragraph 2 and demands strict proof thereof.

3. Paragraph 3 contains Plaintiff's characterization of this action to which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies any violation of the TCPA, denies Plaintiff's individual claim against JDC Healthcare is representative of any other individual's claim, denies that Plaintiff or any putative class have a right to any damages, legal or equitable remedies, and denies any class exists or can be properly certified in this case.

JURISDICTION AND VENUE

4. Paragraph 4 addressing subject matter jurisdiction states a legal conclusion to which no response is required. To the extent a response is deemed to be required, JDC Healthcare admits Plaintiff invokes this Court's jurisdiction pursuant to 47 U.S.C. § 227(b).

5. Paragraph 5 addressing personal jurisdiction and venue state legal conclusions to which no response is required. To the extent a response is deemed to be required, JDC Healthcare does not dispute personal jurisdiction or venue, but denies that Plaintiff or any putative class member is entitled to damages, and specifically denies that any class should be certified in this case.

PARITES

6. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and on that basis, denies same and demands strict proof thereof.

7. JDC Healthcare admits that it is a limited liability company with its principal place of business in Dallas County, Texas. JDC Healthcare denies the remaining allegations contained in Paragraph 7 and demands strict proof thereof.

8. Paragraph 8 contains Plaintiff's definition of the term "Defendant" to which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies any violation of the TCPA, denies that Plaintiff or any putative class member is entitled to damages, and specifically denies that any class should be certified in this case.

FACTS

9. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9, and on that basis, denies same and demands strict proof thereof.

10. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10, and on that basis, denies same and demands strict proof thereof.

11. In response to the allegations of Paragraph 11, JDC Healthcare states that the referenced, selective “screenshots” speak for themselves. To the extent the allegations of Paragraph 11 suggest, explicitly or implicitly, that JDC Healthcare has taken any action that would impose liability on JDC Healthcare, those allegations are specifically denied.

12. In response to the allegations of Paragraph 12, JDC Healthcare states that the referenced, selective “screenshots” speak for themselves. To the extent the allegations of Paragraph 12 suggest, explicitly or implicitly, that JDC Healthcare has taken any action that would impose liability on JDC Healthcare, those allegations are specifically denied.

13. In response to the allegations of Paragraph 13, JDC Healthcare states that the referenced, selective “screenshots” speak for themselves. To the extent the allegations of Paragraph 13 suggest, explicitly or implicitly, that JDC Healthcare has taken any action that would impose liability on JDC Healthcare, those allegations are specifically denied.

14. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and on that basis, denies same and demands strict proof thereof.

15. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and on that basis, denies same and demands strict proof thereof.

16. JDC Healthcare lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16, and on that basis, denies same and demands strict proof thereof.

17. JDC Healthcare denies the allegations contained in Paragraph 17 and demands strict proof thereof.

18. JDC Healthcare admits that it regularly maintains records related to text messages sent to customers registered to receive its text messages. JDC Healthcare denies the remaining allegations contained in Paragraph 18 and demands strict proof thereof.

19. JDC Healthcare denies the allegations contained in Paragraph 19 and demands strict proof thereof.

CLASS ACTION ALLEGATIONS

20. Paragraph 20 contains Plaintiff's characterization of this action as well as legal conclusions to which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies Plaintiff has properly defined an ascertainable class or that this action is appropriate for class treatment.

21. Paragraph 21 contains Plaintiff's characterization of this action to which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies Plaintiff has properly defined an ascertainable class or that this action is appropriate for class treatment.

22. Paragraph 22 contains a purported reservation or rights to which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies Plaintiff will be able to define any ascertainable class or that the Complaint could be amended such that the claims asserted would be appropriate for class treatment.

23. Paragraph 23 contains certain "exclusions" to Plaintiff's purported class definition which no response is required. To the extent a response is deemed to be required, JDC Healthcare denies Plaintiff has properly defined an ascertainable class or that this action is appropriate for class treatment.

24. JDC Healthcare denies the allegations contained in Paragraph 24 and demands strict proof thereof.

25. JDC Healthcare denies the allegations contained in Paragraph 25 and specifically denies that any class should be certified in this case.

26. JDC Healthcare denies the allegations contained in Paragraph 26 and its subparts, and specifically denies that any class should be certified in this case.

27. JDC Healthcare denies the allegations contained in Paragraph 27 and specifically denies that any class should be certified in this case.

28. JDC Healthcare denies the allegations contained in Paragraph 28 and specifically denies that any class should be certified in this case.

29. JDC Healthcare denies the allegations contained in Paragraph 29 and specifically denies that any class should be certified in this case.

30. JDC Healthcare denies the allegations contained in Paragraph 30 and specifically denies that any class should be certified in this case.

COUNT I

31. JDC Healthcare reasserts its responses to paragraphs 1 through 30 above, incorporates the same as if fully set forth herein, and further incorporates its affirmative defenses in response thereto.

32. Paragraph 32 contains legal conclusions to which no response is required. To the extent a response is deemed to be required, JDC Healthcare relies on 47 C.F.R. § 64.1200 *et seq.*, as a whole, to speak for itself rather than on Plaintiff's selective and incomplete characterization thereof.

33. Paragraph 33 contains legal conclusions to which no response is required. To the extent a response is deemed to be required, JDC Healthcare relies on 47 C.F.R. § 64.1200 *et seq.*, as a whole, to speak for itself rather than on Plaintiff's selective and incomplete characterization thereof.

34. JDC Healthcare denies the allegations contained in Paragraph 34 and demands strict proof thereof.

35. JDC Healthcare denies the allegations contained in Paragraph 35 and demands strict proof thereof.

36. JDC Healthcare denies the allegations contained in Paragraph 36 and demands strict proof thereof.

37. JDC Healthcare denies the allegations contained in Paragraph 37 and demands strict proof thereof.

38. JDC Healthcare denies the allegations contained in Paragraph 38 and demands strict proof thereof. JDC Healthcare further denies that Plaintiff or the putative class members are entitled to the relief sought or any relief whatsoever.

39. JDC Healthcare denies the allegations contained in Paragraph 39 and demands strict proof thereof. JDC Healthcare further denies that Plaintiff or the putative class members are entitled to the relief sought or any relief whatsoever.

In response to the “Request for Relief” following Paragraph 39 of Plaintiff’s Complaint, including subparts a) – e) contained therein, JDC Healthcare denies that Plaintiff or any members of the putative class are entitled to any of the relief sought, and denies that any class should be certified in this case or that Plaintiff may represent any putative class.

AFFIRMATIVE DEFENSES

Without assuming the burden of proof on any matters that would otherwise rest with Plaintiff, and expressly denying any and all wrongdoing, JDC Healthcare alleges the following affirmative defenses:

FIRST DEFENSE

Plaintiff’s Complaint fails to state a claim upon which relief may be granted and should therefore be dismissed pursuant to Rule 12(b) of the Federal Rules of Civil Procedure.

SECOND DEFENSE

JDC Healthcare acted in good faith and specifically denies it engaged in a willful and knowing violation of the TCPA toward Plaintiff or others because any such violation (which JDC Healthcare denies) would not have been willful or knowing.

THIRD DEFENSE

Plaintiff and/or any person she purports to represent lacks standing to bring or maintain the claims alleged.

FOURTH DEFENSE

Any violation of the TCPA was unintentional and resulted from a *bona fide* error notwithstanding the reasonable practices and procedures established and implemented by JDC Healthcare to effectively prevent communications in violation of the TCPA. 47 U.S.C. § 227(c)(5).

FIFTH DEFENSE

Plaintiff's claims and/or the claims of any person she purports to represent are barred in whole or in part because the texts at issue were not sent to a residential telephone line.

SIXTH DEFENSE

Prior express consent existed to contact Plaintiff and/or others alleged to be members of the putative class.

SEVENTH DEFENSE

Certain absent members of the putative class may have a contractual obligation to arbitrate any claims they have against JDC Healthcare. Those absent class members are subject to a pre-dispute binding arbitration agreement. 9 U.S.C. § 1, *et seq.*

EIGHTH DEFENSE

The Complaint is barred, in whole or in part, by the conduct, actions and inactions of Plaintiff and/or any person she purports to represent, which amount to and constitute estoppel, wavier, laches, unclean hands, and other equitable doctrines as a bar to the claims of the Plaintiff and the putative class members.

NINTH DEFENSE

Plaintiff's claims and/or the claims of any person she purports to represent are barred in whole or in part because they have not suffered actual damages and have failed to mitigate damages, if any.

TENTH DEFENSE

Plaintiff is not entitled to attorneys' fees.

ELEVENTH DEFENSE

Plaintiff's claim for statutory penalties of up to \$1,500 per violation of the TCPA for herself and the putative class is barred because JDC Healthcare did not engage in willful or knowing misconduct.

TWELFTH DEFENSE

Plaintiff's claims and/or the claims of the class she purports to represent are barred in whole or in part by applicable statute of limitations, including but not limited to 28 U.S.C. § 1658.

THIRTEENTH DEFENSE

Plaintiff's claims and/or the claims of the class she purports to represent are barred because Plaintiff and/or any person she purports to represent consented to, ratified, or acquiesced in all of the alleged acts of which they complain.

FOURTEENTH DEFENSE

The imposition of liability and/or statutory damages under the TCPA, as sought in the Complaint, would violate provisions of the United States Constitution, including the Due Process Clause and prohibition of excessive fines and punishment.

FIFTEENTH DEFENSE

The interpretations of the TCPA, upon which the Complaint is based, are unconstitutionally vague and overbroad, and thus violate provisions of the United States Constitution, including the Due Process Clause.

SIXTEENTH DEFENSE

The interpretations of the TCPA, upon which the Complaint is based, exceed regulatory and statutory authority.

SEVENTEENTH DEFENSE

The interpretations of the TCPA, upon which the Complaint is based, are arbitrary, capricious, an abuse of discretion, results in an approach that does not comport with a caller's constitutional rights of freedom of speech, and disregards the TCPA's statutory language.

EIGHTEENTH DEFENSE

Awarding Plaintiff and/or others alleged to be members of the putative class the relief sought in the Complaint would violate JDC Healthcare's right to due process of law under the United States Constitution. *See, e.g., BMV v. Gore*, 517 U.S. 559, 575-80 (1996), and its progeny.

NINETEENTH DEFENSE

If Plaintiff and/or any person she purports to represent suffered or sustained any loss, injury or damage, the same was directly and proximately caused and contributed to by the intervening acts of others and not by JDC Healthcare.

TWENTIETH DEFENSE

Plaintiff has failed to specify all of the provisions of the TCPA and regulations which she contends were violated. To the extent the Plaintiff relies on a provision of the TCPA or regulations that does not provide for a private right of action, JDC Healthcare asserts as a defense the lack of a private right of action for such alleged violations.

TWENTY-FIRST DEFENSE

JDC Healthcare incorporates herein by reference all provisions set forth within 47 U.S.C. § 227, *et seq.* and 47 C.F.R. § 64.1200, *et seq.* (including prior versions of this statute and regulation) and relies herein on any safe harbor provisions, exemptions, exceptions, limitations, conditions, or other defenses that may be set forth therein.

TWENTY-SECOND DEFENSE

Plaintiff cannot maintain this action as a class action under the Federal Rules of Civil Procedure. Among other things, JDC Healthcare expressly denies that the identities of the putative class members are determinable, that there are common questions of law and fact, that such questions predominate over individual issues, that the Plaintiff's claims are typical, and/or that individualized issues can be adjudicated on a class-wide basis, and that the Plaintiff is an adequate class representative. Plaintiff has the burden of establishing these requirements and all Rule 23 requirements for litigating on a class-wide basis, but is unable to meet this burden.

TWENTY-THIRD DEFENSE

Plaintiff cannot maintain this action as a class action under Rule 23 of the Federal Rules of Civil Procedure because a class action is not superior to other available methods for fairly and efficiently adjudicating the controversy.

TWENTY-FOURTH DEFENSE

Plaintiff's purported class constitutes a "fail safe" class that must be dismissed.

TWENTY-FIFTH DEFENSE

As applied, the TCPA violates the First Amendment of the United States Constitution.

TWENTY-SIXTH DEFENSE

The claims of those alleged to be members of the putative class are barred in whole or in part by the exclusion in the applicable agreements of any liability for indirect, incidental, special, punitive, or consequential damages, and by the limitation of the applicable agreements and the remedies contained in those agreements.

TWENTY-SEVENTH DEFENSE

The claims of Plaintiff and/or other alleged to be members of the putative class are barred, in whole or in part, because JDC Healthcare has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity meeting the requirements of 47 C.F.R. § 64.1200(d).

TWENTY-EIGHTH DEFENSE

The claims of Plaintiff and/or other alleged to be members of the putative class are barred, in whole or in part, because the FCC's rulemaking authority under 47 U.S.C. § 227(c) extends only to unwanted telephone solicitations directed at "residential telephone subscribers," rendering 47 C.F.R. § 64.1200(e) void *ab initio*.

TWENTY-NINTH DEFENSE

JDC Healthcare states that, following completion of discovery and investigation into this matter, additional defenses may become available. JDC Healthcare reserves the right to assert additional defenses that may be discovered in the course of these proceedings. JDC Healthcare

further reserves the right to assert additional defenses regarding the claims of absent class members in the event that this action is certified for class treatment.

WHEREFORE, having fully responded to the Complaint of the Plaintiff, denies the Plaintiff is entitled to any of the relief requested in the Complaint, JDC Healthcare denies the Plaintiff is entitled to certification of any class, and prays that the Complaint be dismissed in its entirety, with prejudice. JDC Healthcare further prays that a judgment be entered in its favor and for such other relief as the Court deems just and appropriate.

Respectfully submitted,

MAYNARD NEXSEN P.C.

/s/ John D. Collins

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CERTIFICATE OF SERVICE

I, John David Collins, an attorney, hereby certify that I caused to be served a true and correct copy of the foregoing document filed in this action electronically (via CM/ECF) on July 12, 2023, for service to all counsel of record.

/s/ John David Collins _____
John David Collins