

Melanie J. Vartabedian, Esquire (#10148)
BALLARD SPAHR LLP
One Utah Center, Suite 800
201 South Main Street
Salt Lake City, Utah 84111-2221
Telephone: 801.531.3000
Facsimile: 801.531.3001
vartabedianm@ballardspahr.com

Jenny N. Perkins, Esquire (PA #306498)
Admitted Pro Hac Vice
BALLARD SPAHR LLP
1735 Market Street, 51st Floor
Philadelphia, PA 19103-7599
Telephone: 215.665.8500
Facsimile: 215.864.8999
perkinsj@ballardspahr.com

Attorneys for Defendant, Snap Finance LLC

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

<p>BRANDI WESLEY, on behalf of herself and others similarly situated,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>SNAP FINANCE LLC,</p> <p style="text-align: center;">Defendant.</p>	<p>SNAP FINANCE LLC’S ANSWER WITH AFFIRMATIVE DEFENSES TO AMENDED CLASS ACTION COMPLAINT</p> <p>Case No.: 2:20-cv-00148-RJS-JCB</p> <p>Chief Judge Robert J. Shelby Magistrate Judge Jared C. Bennett</p>
<p>SNAP FINANCE LLC,</p> <p style="text-align: center;">Third-Party Plaintiff,</p> <p>v.</p> <p>DERRICK DEON JACKSON, JR., A/K/A DERRICK JOHNSON,</p> <p style="text-align: center;">Third-Party Defendant.</p>	

Defendant Snap Finance LLC (“Defendant” or “Snap”), by its undersigned counsel, hereby serves its Answer with Affirmative Defenses to the Amended Class Action Complaint (“Amended Complaint”) pursuant to Federal Rule of Civil Procedure 8, and avers as follows:

NATURE OF THIS ACTION

1. Snap admits only that Plaintiff Brandi Wesley (“Plaintiff”) purports to bring a class action under the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 *et seq.*, pursuant to Federal Rule of Civil Procedure 23. Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any class exists for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

2. Denied. It is specifically denied that Snap has violated the TCPA with respect to Plaintiff and/or the putative class members, or that it “routinely violates” the same.

JURISDICTION AND VENUE

3. The allegation of Paragraph 3 constitutes a legal conclusion to which no response is required.

4. The allegation of Paragraph 4 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 4, but does not challenge venue for purposes of this case.

PARTIES

5. Admitted.

6. Denied as stated. It is admitted only that Snap is a limited liability company organized under the laws of Utah.

FACTUAL ALLEGATIONS

7. Denied. It is denied that Plaintiff is the “sole user” of the cellular telephone number referenced in Paragraph 7 of the Amended Complaint. To the contrary, that cellular

telephone number was expressly provided to Snap by its customer and third-party defendant, Derrick Deon Jackson, Jr. a/k/a/ Derrick Johnson, in an application in August 2019. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 7 of the Amended Complaint and, therefore, denies those allegations. By way of further answer, the above individualized issue of consent renders class treatment improper.

8. Admitted in part and denied in part. It is admitted only that in 2019 Snap attempted to place calls to the cellular telephone number identified in Paragraph 7 of the Amended Complaint. By way of further answer, Snap incorporates herein its response to Paragraph 7, above. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 8 of the Amended Complaint and, therefore, denies those allegations.

9. Admitted in part and denied in part. It is admitted only that from November 6, 2019 through February 7, 2020, Snap attempted to place at least 60 calls to the cellular telephone number identified in Paragraph 7 of the Amended Complaint. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 9 of the Amended Complaint and, therefore, denies those allegations.

10. Denied. It is specifically denied that Plaintiff answered any calls Snap attempted to place to the cellular telephone number identified in Paragraph 7 of the Amended Complaint. Snap denies the remaining allegations of Paragraph 10 of the Amended Complaint.

11. Admitted in part and denied in part. It is admitted only that from November 6, 2019 through February 7, 2020, Snap attempted to leave at least 8 prerecorded messages on the cellular telephone number identified in Paragraph 7 of the Amended Complaint. Snap lacks

knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 11 of the Amended Complaint and, therefore, denies those allegations.

12. Admitted in part and denied in part. Snap admits only that Plaintiff purports to include a link to a recorded voicemail message in Paragraph 12, which speaks for itself. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 12 of the Amended Complaint and, therefore, denies those allegations.

13. Admitted in part and denied in part. Snap admits only that Plaintiff purports to include a link to a website with recorded voicemail messages in Paragraph 13, which speak for themselves. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 13 of the Amended Complaint and, therefore, denies those allegations.

14. Snap admits only that, to the best of Snap's knowledge, information and belief, and after a reasonable investigation, Plaintiff is not a customer of Snap. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 14 of the Amended Complaint and, therefore, denies those allegations.

15. Snap admits only that, to the best of Snap's knowledge, information and belief, and after a reasonable investigation, Plaintiff does not, nor did, have any business relationship with Snap.

16. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 16 of the Amended Complaint and, therefore, denies those allegations.

17. Denied. The allegations of Paragraph 17 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of

Paragraph 17 and further denies that it did not have express consent to call the cellular telephone number identified in the Amended Complaint.

18. Admitted in part and denied in part. Snap admits only that it attempted to place calls to the cellular telephone number identified in Paragraph 7 of the Amended Complaint in an effort to reach its customer and third-party defendant, Derrick Deon Jackson, Jr. a/k/a/ Derrick Johnson who provided that number to Snap in his application. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 18 of the Amended Complaint and, therefore, denies those remaining allegations.

19. Admitted in part and denied in part. Snap admits only that on February 11, 2020, when Plaintiff first notified Snap that she was receiving calls from Snap and that she did not believe that she had an account with Snap and Plaintiff provided Snap with additional information, Snap's representative stated that "it looks like we might have your phone number for somebody's else's account" and informed Plaintiff that she would remove the phone number. Snap denies any allegations in Paragraph 19 that are inconsistent therewith and further denies the allegations as the parties' communication was recorded by both Plaintiff and Snap and, the recording speaks for itself. By way of further answer, Snap denies any implication that it did not have express consent to call the cellular telephone number identified in Paragraph 7 of the Amended Complaint.

20. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 20 of the Amended Complaint and, therefore, denies those allegations.

21. Denied.

22. Admitted in part and denied in part. Snap admits only that Plaintiff purports to include a screenshot of a text message in Paragraph 22, which speaks for itself. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 of the Amended Complaint and, therefore, denies those allegations.

23. Admitted.

24. Admitted in part and denied in part. Snap admits only that Plaintiff purports to include a link to an internet messages board in Paragraph 24, which speaks for itself. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 24 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies as stated Plaintiff's averment that certain alleged information is "relevant."

25. Admitted in part and denied in part. Snap admits only that Plaintiff purports to include a link to Snap's "Application Terms and Conditions" in Paragraph 25, which speaks for itself. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 25 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies as stated Plaintiff's averment that certain alleged information is "significant."

26. Denied. The allegation of Paragraph 26 that Snap used an "automatic telephone dialing system," a term defined by 47 U.S.C. § 227(a)(1), constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies that allegation and denies the remaining allegations of Paragraph 26.

27. Denied. The allegations of Paragraph 27 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 27.

28. Denied. The allegation of Paragraph 28 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 28.

29. Denied. The allegation of Paragraph 29 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 29.

30. Denied. The allegation of Paragraph 30 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 30.

31. Denied. The allegation of Paragraph 31 that Snap used an “automatic telephone dialing system,” a term defined by 47 U.S.C. § 227(a)(1), constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies that allegation. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 31 of the Amended Complaint and, therefore, denies those allegations.

32. Denied. The allegations of Paragraph 32 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 32.

33. Denied. The allegations of Paragraph 33 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 33. By way of further response, Snap denies that it has violated the TCPA.

CLASS ACTION ALLEGATIONS

34. Admitted in part and denied in part. Snap admits only that Plaintiff purports to bring a class action under the TCPA pursuant to Federal Rule of Civil Procedure 23. Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any classes exist for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

35. Denied. The allegations Paragraph 35 as to the composition of the “classes” are denied. By way of further response, Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any of the classes exist for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

36. Denied. The allegation of Paragraph 36 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 36.

37. Denied. Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any classes exist for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 37 of the Amended Complaint and, therefore, denies those allegations.

38. Denied. The allegation of Paragraph 38 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 38.

39. Denied. The allegations of Paragraph 39 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the

allegations of Paragraph 39. By way of further response, Snap denies that any classes exist for purposes of this case.

40. Denied. The allegation of Paragraph 40 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 40.

41. Denied. The allegation of Paragraph 41 that Snap used an “automatic telephone dialing system,” a term defined by 47 U.S.C. § 227(a)(1), constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies that allegation. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 41 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies that any class exists for purposes of this case.

42. Denied. The allegation of Paragraph 42 that Snap used an “artificial or prerecorded voice,” a term used in 47 U.S.C. § 227, constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies that allegation. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 42 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies that any class exists for purposes of this case.

43. Denied. The allegation of Paragraph 43 that Snap used an “automatic telephone dialing system,” a term defined by 47 U.S.C. § 227(a)(1), constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies that allegation. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 43 of the Amended Complaint and, therefore, denies

those allegations. By way of further response, Snap denies that any class exists for purposes of this case.

44. Snap admits only that, to the best of Snap's knowledge, information and belief, and after a reasonable investigation, Plaintiff is not a customer of Snap. Snap lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 44 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies that any classes exist for purposes of this case.

45. Denied. By way of further response, Snap denies that it has violated the TCPA and that any classes exist for purposes of this case.

46. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 46 regarding Plaintiff's legal "theories" in this action and, therefore, denies those allegations. By way of further response, Snap denies that any classes exist for purposes of this case.

47. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 47 of the Amended Complaint and, therefore, denies those allegations. Snap denies that any conduct by Snap caused any "injuries" to Plaintiff. By way of further response, Snap denies that any classes exist for purposes of this case.

48. Denied. The allegation of Paragraph 48 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 48.

49. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 49 of the Amended Complaint and, therefore,

denies those allegations. By way of further response, Snap denies that any classes exist for purposes of this case.

50. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 50 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies that any classes exist for purposes of this case.

51. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 51 of the Amended Complaint and, therefore, denies those allegations.

52. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 52 of the Amended Complaint and, therefore, denies those allegations.

53. Denied. Snap lacks knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 53 of the Amended Complaint and, therefore, denies those allegations. By way of further response, Snap denies that any class exists for purposes of this case.

54. Denied. The allegation of Paragraph 54 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegation of Paragraph 54.

55. Denied. The allegations of Paragraph 55 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 55. Snap further specifically denies that it has violated the TCPA or has engaged in any “conduct, pattern and practice as it pertains to dialing wrong or reassigned

cellular telephone numbers.” By way of further response, Snap denies that any classes exist for purposes of this case.

56. Denied. The allegation of Paragraph 56 constitutes a legal conclusion to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 56.

57. Denied. By way of further response, Snap denied that any classes exist for purposes of this case.

58. Denied. By way of further response, Snap denies that any class exists for purposes of this case.

59. Denied. By way of further response, Snap denies that any classes exist for purposes of this case.

60. Denied. By way of further response, Snap denies that any classes exist for purposes of this case.

61. Denied. Snap denies that Plaintiff or any putative class members have suffered any “damages” as the result of any action or conduct on the part of Snap. The remaining allegations of Paragraph 61 are denied. By way of further response, Snap denies that any classes exist for purposes of this case.

62. Denied. By way of further response, Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any classes exist for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

63. Denied. By way of further response, Snap denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any classes exist

for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

64. Denied. The allegations of Paragraph 64 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 64. By way of further response, Snap denies that any classes exist for purposes of this case.

Count I – Violation of 47 U.S.C. § 227(b)(1)(A)(iii)

65. Snap reasserts its responses to Paragraphs 1 through 64 of the Amended Complaint as if fully set forth herein.

66. Denied. Snap expressly denies Plaintiff's allegation that Snap has violated any provision of the TCPA. The remaining allegations of Paragraph 66 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 66.

67. Denied. Snap expressly denies Plaintiff's allegation that Snap has violated any provision of the TCPA. The remaining allegations of Paragraph 67 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 67.

68. Denied. Snap expressly denies Plaintiff's allegation that Snap has violated any provision of the TCPA. The remaining allegations of Paragraph 68 constitute legal conclusions to which no response is required. To the extent any response is required, Snap denies the allegations of Paragraph 68.

69. Denied. Snap expressly denies Plaintiff's allegations that Snap has violated the TCPA and that Plaintiff and the putative class members are entitled to damages.

Snap further denies that this action may be maintained as a class action, that Plaintiff is entitled to class certification, that any classes exist for purposes of this case, and that either Plaintiff or the putative classes are entitled to any relief whatsoever.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Plaintiff's claims, and the claims of putative class members, are barred because the TCPA is unenforceable as to calls made prior to July 6, 2020 because it was an unconstitutional content-specific restriction on speech.

SECOND DEFENSE

Plaintiff and/or the putative class lack Article III, constitutional standing because she did not suffer an injury-in-fact that is concrete and particularized and actual or imminent.

THIRD DEFENSE

Plaintiff lacks prudential standing because Plaintiff's alleged injury does not fall within the zone of interest to be protected or regulated by the TCPA.

FOURTH DEFENSE

The TCPA claim is barred to the extent that Plaintiff and/or putative class members seek to recover damages for any alleged TCPA violations barred by the applicable statute of limitations.

FIFTH DEFENSE

The TCPA claim is barred to the extent that Snap had the prior express consent to call the cellular telephones of Plaintiff and/or putative class members. Alternatively, Snap had obtained consent from agents authorized to give consent on behalf of Plaintiff and/or any putative class members, and any purported revocation of consent was ineffective as a matter of fact and law.

SIXTH DEFENSE

The demand for attorneys' fees is barred because the TCPA does not authorize the prevailing plaintiff to recover attorneys' fees.

SEVENTH DEFENSE

The TCPA claim is barred as Plaintiff and/or putative class members failed to mitigate their alleged damages, if any.

EIGHTH DEFENSE

Insofar as Plaintiff and/or the putative class members seek statutory damages for willful violations of the TCPA, the TCPA claim is barred to the extent that any calls made by Snap to Plaintiff and/or the putative class members' cellular telephones were inadvertent.

NINTH DEFENSE

The Amended Complaint fails to state a claim upon which relief may be granted.

TENTH DEFENSE

Plaintiff may not participate in a class action or represent a class if she is party to or is otherwise bound by an arbitration agreement. Members of the putative classes, to the extent that they are parties to, or otherwise bound by, an arbitration agreement, may not participate in this action. The claims of such putative class members are subject to arbitration on an individual, non-class basis pursuant to the arbitration agreement(s) contained in the terms and conditions governing class members' account(s) with Snap.

ELEVENTH DEFENSE

Plaintiff is barred from recovery in that any damage sustained by Plaintiff was the direct and proximate result of the independent, intervening, negligent, and/or unlawful conduct of independent third parties or their agents, including but not limited to third-party defendant,

Derrick Deon Jackson, Jr., a/k/a Derrick Johnson, and not any act or omission on the part of Snap.

TWELFTH DEFENSE

The Amended Complaint is barred, in whole or in part, by the conduct, actions, and inactions of Plaintiff and/or the putative class members under the doctrine of ratification.

THIRTEENTH DEFENSE

The Amended Complaint is barred, in whole or in part, by the conduct, actions and/or inactions of Plaintiff and/or the putative class members, which amount to and constitute an estoppel of the claims and any relief sought thereby.

FOURTEENTH DEFENSE

The Amended Complaint is barred, in whole or in part, by the conduct, actions and inactions of Plaintiff and/or the putative class members, which amount to and constitute a waiver of any right or rights Plaintiff may or might have in relation to the matters alleged in the Amended Complaint.

FIFTEENTH DEFENSE

The Amended Complaint is barred, in whole or in part, on the grounds that Plaintiff and/or the putative class members may obtain no relief by reason of the doctrine of unclean hands.

SIXTEENTH DEFENSE

Snap completely and fully performed and discharged any and all obligations and legal duties, if any, arising out the matters alleged in the Amended Complaint.

SEVENTEENTH DEFENSE

Plaintiff's request for injunctive and/or equitable relief is barred because Plaintiff has an adequate legal remedy.

EIGHTEENTH DEFENSE

The Amended Complaint is barred, in whole or in part, on the grounds that Snap acted in good faith at all times with respect to Plaintiff and/or the subscriber or customary user of the telephone number alleged in the Amended Complaint and/or the putative class members.

NINETEENTH DEFENSE

Plaintiff and/or the putative class members failed to exercise reasonable and ordinary care, caution, or prudence in order to avoid incurring the damages sought by the Amended Complaint; thus, the damages, if any, sustained by Plaintiff and/or the putative class members were proximately caused and contributed to by the negligence of Plaintiff and/or the putative class members and/or persons affiliated with Plaintiff and/or the putative class members.

TWENTIETH DEFENSE

The Amended Complaint is barred, in whole or in part, by the doctrine of acquiescence.

TWENTY-FIRST DEFENSE

The Court lacks jurisdiction over the claims of unnamed, out-of-state putative class members.

TWENTY-SECOND DEFENSE

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

1. The numerosity and/or ascertainability of the purported classes;
2. The presence of questions of law or fact common to the putative classes;
3. That Plaintiff's claims are typical of those of the putative classes;
4. That Plaintiff and/or her counsel are adequate representatives of the putative classes;

5. That individual questions of law and/or fact will not predominate over any common questions of law and/or fact which may be presented; and/or
6. That a class action is superior to other methods of adjudicating the matters in dispute.

TWENTY-THIRD DEFENSE

Snap expressly reserves the right to assert such other and further affirmative defenses as may be appropriate.

WHEREFORE, Defendant Snap Finance LLC respectfully requests that judgment be entered in its favor, and against Plaintiff, on the Amended Complaint, and that the Court grant Defendant such other and further relief as it deems just.

DATED this 28th day of December 2020.

/s/ Jenny N. Perkins

Melanie J. Vartabedian
Jenny N. Perkins (*admitted pro hac vice*)
BALLARD SPAHR LLP
Attorneys for Defendant, Snap Finance LLC