

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

| | | |
|---------------------------------------|---|-------------------------|
| J.T. HAND, individually and on behalf |) | |
| of others similarly situated, |) | |
| |) | |
| Plaintiff, |) | Case No.: 4:18-cv-00668 |
| |) | |
| v. |) | |
| |) | |
| BEACH ENTERTAINMENT, LLC |) | |
| d/b/a SHARK BAR, et al. |) | |
| |) | |
| Defendants. |) | |

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES TO
SECOND AMENDED COMPLAINT**

Defendants Beach Entertainment KC, LLC d/b/a Shark Bar, improperly named in this action as Beach Entertainment, LLC (hereinafter “Shark Bar”), Entertainment Consulting International, LLC (hereinafter “ECI”), and The Cordish Companies, Inc. (hereinafter “Cordish” and together with Shark Bar and ECI, “Defendants”), by and through their attorneys Foland, Wickens, Roper, Hofer & Crawford, P.C., and Kelley Drye and Warren LLP, and hereby file their Answer¹ and Affirmative Defenses to Plaintiff’s Second Amended Complaint filed by Plaintiff J.T. Hand, individually and on behalf of all others similarly situated:

PARTIES

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Second Amended Complaint and, therefore, deny the same.

¹ Defendants’ response is limited to the numbered allegations set forth in Plaintiff’s Second Amended Complaint. To the extent a response is required to the headings set forth in the Second Amended Complaint, they are denied.

2. Defendants admit the allegations contained in Paragraph 2 of the Second Amended Complaint.

3. Defendants admit the allegations contained in Paragraph 3 of the Second Amended Complaint.

4. Defendants admit the allegations contained in Paragraph 4 of the Second Amended Complaint.

5. Defendants deny the allegations contained in Paragraph 5 of the Second Amended Complaint.

6. Defendants deny the allegations contained in Paragraph 6 of the Second Amended Complaint.

JURISDICTION AND VENUE

7. Paragraph 7 of the Second Amended Complaint is a legal conclusion and, therefore, Defendants are not required to respond. To the extent any response is required, Defendants deny the allegations contained in Paragraph 7.

8. Paragraph 8 of the Second Amended Complaint is a legal conclusion and, therefore, Defendants are not required to respond. To the extent any response is required, Defendants deny the allegations contained in Paragraph 8.

9. Defendants deny the allegations contained in Paragraph 9 of the Second Amended Complaint.

10. Defendants deny the allegations contained in Paragraph 10 of the Second Amended Complaint.

11. Defendants deny the allegations contained in Paragraph 11 of the Second Amended Complaint.

12. Defendants deny the allegations contained in Paragraph 12 of the Second Amended Complaint.

NATURE OF THE ACTION

13. Defendants deny the allegations contained in Paragraph 13 of the Second Amended Complaint.

14. Defendants deny the allegations contained in Paragraph 14 of the Second Amended Complaint.

15. Defendant Shark Bar admits that it sent text messages; however, Shark Bar denies the remaining allegations of Paragraph 15 of the Second Amended Complaint, including, without limitation, that the text messages violated the TCPA. ECI and Cordish deny all allegations contained in Paragraph 15 of the Second Amended Complaint.

16. Defendant Shark Bar admits it sent text messages; however, Shark Bar denies the remaining allegations contained in Paragraph 16 of the Second Amended Complaint. ECI and Cordish deny all allegations contained in Paragraph 16 of the Second Amended Complaint.

17. Defendants deny the allegations contained in Paragraph 17 of the Second Amended Complaint.

18. Defendants deny the allegations contained in Paragraph 18 of the Second Amended Complaint, including all subsections contained therein.

19. Defendants deny the allegations contained in Paragraph 19 of the Second Amended Complaint, including all subsections contained therein.

20. With respect to the allegations contained in Paragraph 20 of the Second Amended Complaint, Defendants admit that Plaintiff has brought this action on his own behalf and on behalf of a putative class, but Defendants deny that this case is suitable for class treatment.

Defendants further state that they did not violate the TCPA or any other statute and, therefore, Plaintiff and the putative classes are not entitled to injunctive relief or statutory damages.

THE TELEPHONE CONSUMER PROTECTION ACT OF 1991
47 U.S.C. § 227, et seq.

21. Defendants deny knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 21 and, therefore, deny the same.

22. The allegations contained in Paragraph 22 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 22.

23. The allegations contained in Paragraph 23 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 23, including in the referenced footnote.

24. The allegations contained in Paragraph 24 of the Second Amended Complaint are legal conclusions, and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 24, including in the referenced footnote.

25. The allegations contained in Paragraph 25 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete

content and context and otherwise deny the allegations contained in Paragraph 25.

26. The allegations contained in Paragraph 26 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 26, including in the referenced footnote.

27. The allegations contained in Paragraph 27 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 27.

28. The allegations contained in Paragraph 28 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced documents for their complete content and context and otherwise deny the allegations contained in Paragraph 28.

29. The allegations contained in Paragraph 29 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 29.

30. The allegations contained in Paragraph 30 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 30.

31. The allegations contained in Paragraph 31 of the Second Amended Complaint are

legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced documents for their complete content and context and otherwise deny the allegations contained in Paragraph 31.

32. The allegations contained in Paragraph 32 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations contained in Paragraph 32.

33. The allegations contained in Paragraph 33 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced documents for their complete content and context and otherwise deny the allegations contained in Paragraph 33.

34. The allegations contained in Paragraph 34 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced documents for their complete content and context and otherwise deny the allegations contained in Paragraph 34.

35. The allegations contained in Paragraph 35 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations in Paragraph 35.

36. The allegations contained in Paragraph 36 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations in Paragraph 36.

37. The allegations contained in Paragraph 37 of the Second Amended Complaint are legal conclusions and, therefore, Defendants are not required to respond. To the extent a response is required, Defendants refer the Court to the referenced document for its complete content and context and otherwise deny the allegations in Paragraph 37.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

38. Defendants deny the allegations contained in Paragraph 38 of the Second Amended Complaint.

39. Defendants deny the allegations contained in Paragraph 39 of the Second Amended Complaint.

40. Defendants deny the allegations contained in Paragraph 40 of the Second Amended Complaint.

41. Defendants deny the allegations contained in Paragraph 41 of the Second Amended Complaint.

42. Defendants deny the allegations contained in Paragraph 42 of the Second Amended Complaint and refer the Court to the referenced website for its complete content and context.

43. Defendants deny the allegations contained in Paragraph 43 of the Second Amended Complaint, including in the referenced footnote.

44. Defendants deny the allegations contained in Paragraph 44 of the Second Amended Complaint.

45. Defendants deny the allegations contained in Paragraph 45 of the Second Amended Complaint and refer to the referenced document for its complete content and context.

46. Defendants deny the allegations contained in Paragraph 46 of the Second

Amended Complaint.

47. Defendants deny the allegations contained in Paragraph 47 of the Second Amended Complaint.

48. Defendants deny the allegations contained in Paragraph 48 of the Second Amended Complaint.

49. Defendants deny the allegations contained in Paragraph 49 of the Second Amended Complaint.

50. Defendants deny the allegations contained in Paragraph 50 of the Second Amended Complaint.

51. Defendants deny the allegations contained in Paragraph 51 of the Second Amended Complaint.

52. Defendants deny the allegations contained in Paragraph 52 of the Second Amended Complaint.

53. Defendants deny the allegations contained in Paragraph 53 of the Second Amended Complaint.

54. Defendants deny the allegations contained in Paragraph 54 of the Second Amended Complaint.

55. Defendants deny the allegations contained in Paragraph 55 of the Second Amended Complaint.

56. Defendants deny the allegations contained in Paragraph 56 of the Second Amended Complaint.

57. Defendants deny the allegations contained in Paragraph 57 of the Second Amended Complaint, including in the referenced footnote.

58. Defendants deny the allegations contained in Paragraph 58 of the Second Amended Complaint.

59. Defendants deny the allegations contained in Paragraph 59 of the Second Amended Complaint.

60. Defendants deny the allegations contained in Paragraph 60 of the Second Amended Complaint.

61. Defendants deny the allegations contained in Paragraph 61 of the Second Amended Complaint, including in all of the referenced footnotes.

FACTUAL ALLEGATIONS SPECIFIC TO PLAINTIFF J.T. HAND

62. Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 62 of the Second Amended Complaint and, therefore, deny the same.

63. Defendants deny the allegations contained in Paragraph 63 of the Second Amended Complaint.

64. Defendants deny the allegations contained in Paragraph 64 of the Second Amended Complaint.

65. Defendants deny the allegations contained in Paragraph 65 of the Second Amended Complaint.

66. Defendants deny the allegations contained in Paragraph 66 of the Second Amended Complaint.

67. Defendants deny the allegations contained in Paragraph 67 of the Second Amended Complaint.

68. Defendants deny the allegations contained in Paragraph 68 of the Second

Amended Complaint.

69. Defendants deny the allegations contained in Paragraph 69 of the Second Amended Complaint.

70. Defendants deny the allegations contained in Paragraph 70 of the Second Amended Complaint.

71. Defendants deny the allegations contained in Paragraph 71 of the Second Amended Complaint.

CLASS ACTION ALLEGATIONS

72. Defendants restate and incorporate their responses to Paragraphs 1 through 71 as though fully set forth herein.

73. Defendants admit that Plaintiff brought this action on behalf of himself and a putative class. Defendants deny the remaining allegations contained in Paragraph 73 of the Second Amended Complaint.

74. Defendants admit that Plaintiff brought this action on behalf of himself and a putative class. Defendants deny the remaining allegations contained in Paragraph 74 of the Second Amended Complaint.

75. Defendants admit that Plaintiff brought this action on behalf of himself and a putative class. Defendants deny the remaining allegations contained in Paragraph 75 of the Second Amended Complaint.

76. Defendants admit that Plaintiff brought this action on behalf of himself and a putative class. Defendants deny the remaining allegations contained in Paragraph 76 of the Second Amended Complaint.

77. Defendants are without knowledge or information sufficient to form a belief as to

the truth or falsity of the allegations contained in Paragraph 77 of the Second Amended Complaint and, therefore, deny the same.

78. Defendants deny the allegations contained in Paragraph 78 of the Second Amended Complaint.

79. Defendants deny the allegations contained in Paragraph 79 of the Second Amended Complaint and all subsections therein.

80. Defendants deny the allegations contained in Paragraph 80 of the Second Amended Complaint.

81. Defendants deny the allegations contained in Paragraph 81 of the Second Amended Complaint.

82. Defendants deny the allegations contained in Paragraph 82 of the Second Amended Complaint.

COUNT I
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(b)(1)(A)(iii)

83. Defendants restate and incorporate their responses to Paragraphs 1 through 82 as though fully set forth herein.

84. Defendants deny the allegations contained in Paragraph 84 of the Second Amended Complaint.

85. Defendants deny the allegations contained in Paragraph 85 of the Second Amended Complaint.

86. Defendants deny the allegations contained in Paragraph 86 of the Second Amended Complaint.

87. Defendants deny the allegations contained in Paragraph 87 of the Second

Amended Complaint.

88. Defendants deny the allegations contained in Paragraph 88 of the Second Amended Complaint.

89. Defendants state that the allegations contained in Paragraph 89 contain legal conclusions and, therefore, Defendants are not required to respond. To the extent a further response is required, Defendants deny the allegations contained in Paragraph 89 of the Second Amended Complaint. Defendants further deny they violated the TCPA or any other statute and also deny the allegations contained in Paragraph 89 to the extent the same are inconsistent with the law.

90. Defendants deny Plaintiff and the putative class are entitled to any requested relief as set forth in Paragraph 90 of the Second Amended Complaint.

COUNT II
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)

91. Defendants restate and incorporate by reference their responses to Paragraphs 1 through 90 as though fully set forth herein.

92. Defendants deny the allegations contained in Paragraph 92 of the Second Amended Complaint.

93. The allegations contained in Paragraph 93 contain legal conclusions and, therefore, Defendants are not required to respond. To the extent a further response is required, Defendants deny the allegations contained in Paragraph 93 of the Second Amended Complaint. Defendants further specifically deny they violated the TCPA or any other statute and deny the allegations contained in Paragraph 93 to the extent inconsistent with law.

94. Defendants deny the allegations contained in Paragraph 94 of the Second

Amended Complaint.

95. Defendants deny the allegations contained in Paragraph 95 of the Second Amended Complaint.

96. Defendants deny the allegations contained in Paragraph 96 of the Second Amended Complaint.

97. Defendants deny the allegations contained in Paragraph 97 of the Second Amended Complaint.

98. Defendants deny the allegations contained in Paragraph 98 of the Second Amended Complaint.

99. Defendants deny the allegations contained in Paragraph 99 of the Second Amended Complaint.

100. The allegations contained in Paragraph 100 contain legal conclusions and, therefore, Defendants are not required to respond. To the extent a further response is required, Defendants deny the allegations contained in Paragraph 100 of the Second Amended Complaint. Defendants further deny they violated the TCPA or any other statute and also deny the allegations contained in Paragraph 100 to the extent inconsistent with law.

101. Defendants deny that Plaintiff and the putative class are entitled to any requested relief as set forth in Paragraph 101 of the Second Amended Complaint.

COUNT III
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(c)(2)

102. Defendants restate and incorporate their responses to Paragraphs 1 through 101 as though fully set forth herein.

103. Defendants deny the allegations contained in Paragraph 103 of the Second

Amended Complaint.

104. Defendants deny the allegations contained in Paragraph 104 of the Second Amended Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Second Amended Complaint.

106. Defendants deny the allegations contained in Paragraph 106 of the Second Amended Complaint.

107. Defendants deny the allegations contained in Paragraph 107 of the Second Amended Complaint.

108. Defendants deny the allegations contained in Paragraph 108 of the Second Amended Complaint.

109. Defendants deny the allegations contained in Paragraph 109 of the Second Amended Complaint.

110. Defendants deny the allegations contained in Paragraph 110 of the Second Amended Complaint.

111. The allegations contained in Paragraph 111 are legal conclusions and, therefore, Defendants are not required to respond. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 111 of the Second Amended Complaint. Defendants further deny they violated the TCPA or any other statute and also deny the allegations contained in Paragraph 111 to the extent inconsistent with law.

112. Defendants deny that Plaintiff and the putative class are entitled to the requested relief as set forth in Paragraph 112 of the Second Amended Complaint.

COUNT IV
VIOLATIONS OF THE TCPA, 47 U.S.C. § 227(c); 47 C.F.R. § 64.1200(d)(3)

113. Defendants restate and incorporate their responses to Paragraphs 1 through 112 as though fully set forth herein.

114. Defendants deny the allegations contained in Paragraph 114 of the Second Amended Complaint.

115. Defendants deny the allegations contained in Paragraph 115 of the Second Amended Complaint.

116. Defendants deny the allegations contained in Paragraph 116 of the Second Amended Complaint.

117. Defendants deny the allegations contained in Paragraph 117 of the Second Amended Complaint.

118. Defendants deny the allegations contained in Paragraph 118 of the Second Amended Complaint.

119. Defendants deny the allegations contained in Paragraph 119 of the Second Amended Complaint.

120. Defendants deny the allegations contained in Paragraph 120 of the Second Amended Complaint.

121. The allegations contained in Paragraph 121 are legal conclusions and, therefore, Defendants are not required to respond. To the extent that a response is required, Defendants deny the allegations contained in Paragraph 121 of the Second Amended Complaint. Defendants further deny they violated the TCPA or any other statute and also deny the allegations contained in Paragraph 121 to the extent inconsistent with law.

122. Defendants deny that Plaintiff and the putative class are entitled to the requested relief as set forth in Paragraph 122 of the Second Amended Complaint.

JURY DEMAND

Defendants admit that Plaintiff has requested a jury trial as set forth in the Second Amended Complaint.

AFFIRMATIVE DEFENSES

By way of further response, Defendants assert and allege the following Affirmative Defenses to Plaintiff's Second Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

Plaintiffs have failed to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Shark Bar had prior express consent, permission, invitation or inquiry to send any text messages it may have sent, including to Plaintiff and/or the putative classes.

THIRD AFFIRMATIVE DEFENSE

Shark Bar had an established business relationship with the recipients of any text messages, including with Plaintiff and the putative classes and such relationship bars Plaintiff's and the putative classes' claims.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's individual and class claims against Defendants must be dismissed because neither Plaintiff nor the putative classes have suffered injury-in-fact, and, therefore, Plaintiff and the putative classes lack standing to assert the claims in the Second Amended Complaint.

FIFTH AFFIRMATIVE DEFENSE

Defendants allege that at all times mentioned in the Second Amended Complaint, Defendants acted lawfully and within their legal rights, with a good faith belief in the exercise of those rights, and in the furtherance of a legitimate business purpose. Further, Defendants acted in good faith in the honest belief that the acts, conduct and communications, if any, of Defendants were justified under the circumstances based on information reasonably available to Defendants.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join the necessary and indispensable parties in this action.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the applicable Statute of Limitations.

EIGHTH AFFIRMATIVE DEFENSE

Defendants allege that the award of statutory penalties against Defendants would violate the Due Process clause of the United States Constitution and constitute excessive fines in violation of the Eighth Amendment of the United States Constitution.

NINTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' claims are barred, in whole or in part, by the doctrines of laches, unclean hands, and waiver.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' assert claims under provisions of the TCPA that are unconstitutional.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' claims against Defendants are barred, in whole or in part, by the TCPA's "Safe Harbor" provision or other "Safe Harbor" defenses.

TWELFTH AFFIRMATIVE DEFENSE

Defendants allege that by Plaintiff's and the absent class members' conduct, representations, and omissions, upon which Defendants detrimentally relied, Plaintiff and absent class members are equitably estopped from asserting any claim for relief against Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff and/or the putative classes have expressly or impliedly consented to and approved all of the acts and omissions about which Plaintiff now complain. Accordingly, Plaintiff and/or the putative classes are barred from pursuing claims alleged in the Second Amended Complaint.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendants allege that Plaintiff and the putative classes are not entitled to any relief because Defendants' conduct did not proximately cause any damages, injury or loss to Plaintiff or any absent class member.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendants allege that by conduct, representations, and omissions, Plaintiff and/or the putative classes have waived, relinquished, and/or abandoned any claim for relief against Defendants respecting the matters that are the subject of the Second Amended Complaint.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' claims against Defendants are barred by the First Amendment to the United States Constitution.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' claims are barred because Defendants did not engage in willful and/or knowing misconduct.

EIGHTEENTH AFFIRMATIVE DEFENSE

ECI and Cordish did not send the alleged text messages to Plaintiff and/or to the putative classes.

NINETEENTH AFFIRMATIVE DEFENSE

Shark Bar did not send unsolicited text messages to Plaintiff and/or to the putative classes.

TWENTIETH AFFIRMATIVE DEFENSE

Defendants are informed and believe, and on that basis allege, that granting Plaintiff's demand would result in unjust enrichment, as Plaintiff and the putative classes would receive more money than they are entitled to receive.

TWENTY-FIRST AFFIRMATIVE DEFENSE

The Court lacks personal jurisdiction over ECI and Cordish.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiff and the putative classes are not entitled to relief under 47 C.F.R. § 64.1200(d) because there is no private right of action under this regulation.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiff and the putative classes are not entitled to relief under 47 U.S.C. § 227(c)(5) because Defendants did not make any alleged telephone solicitations to them on their residential telephone lines.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiff's and the putative classes' claims against Defendants are barred, in whole or in part, because Defendants maintained and followed written TCPA procedures.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs and the putative classes failed to mitigate alleged damages, including by failing to revoke consent to receive text messages.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Claims on behalf of putative class members are subject to arbitration provisions.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Defendants are not liable for any violation, even if one occurred, because the violation was not intentional, and if any violation occurred, it resulted from a bona fide error notwithstanding Defendants' maintenance of procedures reasonably adapted to avoid any such error.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

Defendants established and implemented, with due care, reasonable practices and procedures to effectively prevent telephone solicitations.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Defendants state they currently have insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Defendants reserve the right to assert additional affirmative defenses in the event that discovery indicates it would be appropriate.

WHEREFORE, Defendants pray for judgment as follows:

1. Plaintiff take nothing by reason of their Second Amended Complaint;

2. That judgment be entered against Plaintiff and in favor of Defendants;
3. That Defendants recover all expenses, costs, and attorneys' fees in connection with this lawsuit; and
4. That the Court grant Defendants such other and further relief as it deems just and proper.

Dated: November 14, 2019

Respectfully submitted,

/s/Jacqueline M. Sexton

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**ATTORNEYS FOR DEFENDANTS
BEACH ENTERTAINMENT KC, LLC
d/b/a SHARK BAR, ENTERTAINMENT
CONSULTING INTERNATIONAL, LLC, AND
THE CORDISH COMPANIES, INC.,**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 14th day of November, 2019, a true and correct copy of the above and foregoing document was filed with the Court's CM-ECF system which will provide notice to all counsel of record.

/s/ Jacqueline M. Sexton

ATTORNEYS FOR DEFENDANTS

BEACH ENTERTAINMENT KC, LLC

d/b/a SHARK BAR, ENTERTAINMENT CONSULTING

INTERNATIONAL, LLC, AND

THE CORDISH COMPANIES, INC.