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10 Attorneys for Defendant
11 SPRING EQ LLC

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 ROBERT MASON, individually, and
15 on behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 SPRING EQ LLC,

19 Defendant.

Case No. 5:24-cv-01833

**DEFENDANT SPRING EQ LLC'S
ANSWER AND COUNTERCLAIM
TO PLAINTIFF ROBERT
MASON'S FIRST AMENDED
COMPLAINT**

20 Defendant Spring EQ LLC ("Spring EQ"), by and through its undersigned
21 counsel, files its Answer, Affirmative Defenses and Counterclaim to the First
22 Amended Complaint ("FAC") filed by Plaintiff Robert Mason ("Plaintiff") [ECF
23 No. 18].

24 Spring EQ denies each and every allegation in the FAC unless expressly
25 admitted or otherwise qualified, as follows:

26 **NATURE OF THE ACTION**

27 1. To the extent that Paragraph 1 is construed to state a claim against
28 Spring EQ, Spring EQ denies that it violated the Telephone Consumer Protection Act

1 (“TCPA”), 47 U.S.C. § 227, denies that Plaintiff’s class is certifiable and denies any
2 statement or allegation in Paragraph 1.

3 2. Spring EQ admits that it is a mortgage lender that provides consumer
4 financial services, but denies the remaining allegations in Paragraph 2.

5 3. Paragraph 3 alleges legal conclusions to which no response is required.
6 To the extent a response is deemed necessary, Spring EQ denies that Plaintiff or any
7 class member is entitled to relief and denies the remaining allegations of Paragraph
8 3.

9 **JURISDICTION AND VENUE**

10 4. Paragraph 4 alleges legal conclusions to which no response is required.
11 To the extent a response is deemed necessary, Spring EQ states that 47 U.S.C. § 227,
12 28 U.S.C. § 1331 and 28 U.S.C. § 1332 are federal statutes that speak for themselves
13 and otherwise denies the allegations in Paragraph 4.

14 5. Paragraph 5 alleges legal conclusion to which no response is required.
15 To the extent a response is deemed necessary, Spring EQ states that 28 U.S.C. §
16 1391(b) and (c) are federal statutes that speak for themselves and otherwise denies
17 the allegations in Paragraph 5.

18 **PARTIES**

19 6. Spring EQ is without sufficient knowledge or information to form a
20 belief as to the truth of the allegations in Paragraph 6 regarding Plaintiff Robert
21 Mason and his residence and therefore denies the same. Paragraph 6 further alleges
22 legal conclusions to which no response is required. To the extent a response is
23 deemed necessary, Spring EQ denies the allegations of Paragraph 6.

24 7. Spring EQ admits that it is a Delaware company whose principal place
25 of business is located at 1 W Elm St Suite 450, Conshohocken, PA 19428 and
26 otherwise denies the allegations of Paragraph 7.

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1 8. Paragraph 8 of the Complaint requires neither admission nor denial. To
2 the extent a response is deemed necessary, Spring EQ denies the allegations of
3 Paragraph 8.

4 **FACTUAL ALLEGATIONS**

5 9. Spring EQ admits that it is a mortgage lender that sells mortgages, but
6 denies the remaining allegations of Paragraph 9.

7 10. Spring EQ admits the allegations of Paragraph 10.

8 11. Spring EQ admits that it purchases consumer lead information from
9 LendingTree, LLC, but denies the remaining allegations of Paragraph 11.

10 12. Spring EQ admits that it purchased Plaintiff's lead information from
11 LendingTree after Plaintiff visited LendingTree's website on or about January 24,
12 2024, but denies the remaining allegations of Paragraph 12.

13 13. Paragraph 13 alleges legal conclusions to which no response is required.
14 To the extent a response is deemed necessary, Spring EQ denies the allegations of
15 Paragraph 13.

16 14. Paragraph 14 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Spring EQ denies the allegations of
18 Paragraph 14.

19 15. Paragraph 15 alleges legal conclusions to which no response is required.
20 To the extent a response is deemed necessary, Spring EQ denies the allegations of
21 Paragraph 15.

22 16. Paragraph 16 alleges legal conclusions to which no response is required.
23 To the extent a response is deemed necessary, Spring EQ denies the allegations of
24 Paragraph 16.

25 17. Paragraph 17 alleges legal conclusions to which no response is required.
26 To the extent a response is deemed necessary, Spring EQ denies the allegations of
27 Paragraph 17.

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1 18. Paragraph 18 alleges legal conclusions to which no response is required.
2 To the extent a response is deemed necessary, Spring EQ denies the allegations of
3 Paragraph 18.

4 19. Paragraph 19 alleges legal conclusions to which no response is required.
5 Spring EQ is without sufficient knowledge or information to form a belief as to the
6 truth of the allegations in Paragraph 19 and therefore denies the same.

7 20. Paragraph 20 alleges legal conclusions to which no response is required.
8 To the extent a response is deemed necessary, Spring EQ denies the allegations of
9 Paragraph 20.

10 21. Paragraph 21 alleges legal conclusions to which no response is required.
11 To the extent a response is deemed necessary, Spring EQ denies the allegations of
12 Paragraph 21.

13 22. Spring EQ denies the allegations of Paragraph 22.

14 23. Spring EQ is without sufficient knowledge or information to form a
15 belief as to the truth of the allegations of Paragraph 23 and therefore denies the same.

16 24. Paragraph 24 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Spring EQ denies the allegations of
18 Paragraph 24.

19 25. Paragraph 25 alleges legal conclusions to which no response is required.
20 To the extent a response is deemed necessary, Spring EQ denies the allegations of
21 Paragraph 25.

22 26. Paragraph 26 alleges legal conclusions to which no response is required.
23 To the extent a response is deemed necessary, Spring EQ denies the allegations of
24 Paragraph 26.

25 27. Paragraph 27 alleges legal conclusions to which no response is required.
26 To the extent a response is deemed necessary, Spring EQ denies the allegations of
27 Paragraph 27.

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1 28. Spring EQ is without sufficient knowledge or information to form a
2 belief as to the truth of the allegations in Paragraph 28 and therefore denies the same.

3 29. Spring EQ is without sufficient knowledge or information to form a
4 belief as to the truth of the allegations in Paragraph 29 and therefore denies the same.

5 30. Spring EQ is without sufficient knowledge or information to form a
6 belief as to the truth of the allegations in Paragraph 30 and therefore denies the same.

7 31. Spring EQ is without sufficient knowledge or information to form a
8 belief as to the truth of the allegations in Paragraph 31 and therefore denies the same.

9 32. Paragraph 32 alleges legal conclusion to which no response is required.
10 To the extent a response is deemed necessary, Spring EQ states that 47 C.F.R.
11 64.1200(c) is a federal regulation that speaks for itself and otherwise denies the
12 allegations in Paragraph 32.

13 33. Spring EQ denies the allegations of Paragraph 33.

14 34. Paragraph 34 alleges legal conclusions to which no response is required.
15 To the extent a response is deemed necessary, Spring EQ denies the allegations of
16 Paragraph 34.

17 35. Spring EQ is without sufficient knowledge or information to form a
18 belief as to the truth of the allegations in Paragraph 35 and therefore denies the same.

19 **CLASS ALLEGATIONS**

20 **Proposed Class**

21 36. Paragraph 36 alleges legal conclusions to which no response is required.
22 To the extent a response is deemed necessary, Spring EQ states that Fed. R. Civ. P.
23 23 is a federal rule that speaks for itself, and otherwise denies the allegations in
24 Paragraph 36. Spring EQ further denies that it violated the TCPA, denies that
25 Plaintiff's class is properly certifiable and denies that Plaintiff or any other individual
26 is entitled to relief from Spring EQ.

1 37. Paragraph 37 alleges legal conclusions to which no response is required.
2 To the extent a response is deemed necessary, Spring EQ denies the class defined in
3 Paragraph 37 can or should be certified because it fails to meet the requirements of
4 the Federal Rules of Civil Procedure. Spring EQ further denies Plaintiff may maintain
5 this action as a class action or that Plaintiff is an adequate class representative. Spring
6 EQ further denies the allegations in Paragraph 37 and denies that it violated the
7 TCPA.

8 38. Spring EQ denies that the class can or should be certified and denies the
9 remaining allegations of Paragraph 38.

10 39. Paragraph 39 alleges legal conclusions to which no response is required.
11 To the extent a response is deemed necessary, Spring EQ denies the allegations in
12 Paragraph 39.

13 **Numerosity**

14 40. Paragraph 40 alleges legal conclusions to which no response is required.
15 To the extent a response is deemed necessary, Spring EQ denies the allegations in
16 Paragraph 40

17 41. Paragraph 41 alleges legal conclusions to which no response is required.
18 To the extent a response is deemed necessary, Spring EQ lacks the knowledge or
19 information sufficient to form a belief as to the truth of the allegations in Paragraph
20 41. Spring EQ denies the remaining allegations in Paragraph 41.

21 **Common Questions of Law and Fact**

22 42. Paragraph 42 alleges legal conclusions to which no response is required.
23 To the extent a response is deemed necessary, Spring EQ denies the allegations in
24 Paragraph 42, including subsections (a)–(f).

25 43. Paragraph 43 alleges legal conclusions to which no response is required.
26 To the extent a response is deemed necessary, Spring EQ denies the allegations in
27 Paragraph 43.

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1 51. Paragraph 51 alleges legal conclusions to which no response is required.
2 To the extent a response is deemed necessary, Spring EQ states that 47 C.F.R. §
3 64.1200(e) is a federal regulation that speaks for itself and otherwise denies the
4 allegations in Paragraph 51.

5 52. Paragraph 52 alleges legal conclusions to which no response is required.
6 To the extent a response is deemed necessary, Spring EQ states that 47 C.F.R. §
7 64.1200(d) is a federal regulation that speaks for itself and otherwise denies the
8 allegations in Paragraph 52.

9 53. Paragraph 53 alleges legal conclusions to which no response is required.
10 To the extent a response is deemed necessary, Spring EQ states that 47 U.S.C. §
11 227(c) is a federal statute that speaks for itself and otherwise denies the allegations
12 in Paragraph 53.

13 54. Paragraph 54 alleges legal conclusions to which no response is required.
14 To the extent a response is deemed necessary, Spring EQ denies the allegations in
15 Paragraph 54.

16 55. Paragraph 55 alleges legal conclusions to which no response is required.
17 To the extent a response is deemed necessary, Spring EQ denies the allegations in
18 Paragraph 55.

19 56. Paragraph 56 alleges legal conclusions to which no response is required.
20 To the extent a response is deemed necessary, Spring EQ denies the allegations in
21 Paragraph 56.

22 **AFFIRMATIVE AND OTHER DEFENSES**

23 Each of the defenses set forth herein is stated as a separate and distinct defense,
24 in the alternative to, and without waiving, any of the other defenses which are herein
25 or which may hereafter be pleaded. Spring EQ reserves the right to raise such
26 additional affirmative and other defenses as may be established during discovery and
27 by the evidence in this case. Spring EQ asserts the following specific defenses:
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FIRST DEFENSE

Plaintiff’s First Amended Complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

This Court lacks personal jurisdiction as to the claims of absent class members who reside outside of Kentucky or whose claims have no connection whatsoever to Kentucky. *See Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1782 (2017).

THIRD DEFENSE

Spring EQ is informed and believes that any alleged injury or damage to Plaintiff or the members of the putative class he purports to represent, which Spring EQ denies, was a result of intentional, negligent, or otherwise wrongful acts of third parties, and any claims against Spring EQ should be reduced in proportion to the faults of those third parties. Plaintiff or the class member’s claims are barred, in whole or in part, because the alleged injuries were caused by acts or omissions of Plaintiff/the putative class members and/or third parties and/or by events outside the control of any of the parties and/or a superseding intervening cause and not by Spring EQ.

FOURTH DEFENSE

Spring EQ did not violate the TCPA directly, and Plaintiff fails to allege a claim under any theory of vicarious liability.

FIFTH DEFENSE

Plaintiff lacks Article III standing to bring this action and to represent any purported class because she did not suffer an injury-in-fact as a result of Spring EQ’s alleged conduct.

SIXTH DEFENSE

The imposition of statutory damages under the TCPA against Spring EQ

1 would violate the due process provisions of the U.S. Constitution and/or the
2 Constitution of California.

3 **SEVENTH DEFENSE**

4 Plaintiff and the putative class’s claims are barred under the doctrines of
5 laches and/or unclean hands.

6 **EIGHTH DEFENSE**

7 To the extent that Plaintiff’s and the purported class members’ claims relate
8 to conduct beyond the applicable statute of limitations, such claims are barred.

9 **NINTH DEFENSE**

10 Plaintiff’s and the purported class members’ claims are barred to the extent
11 they are not the “called party” within the meaning of the TCPA.

12 **TENTH DEFENSE**

13 Plaintiff’s and the purported class members’ claims are barred, or damages
14 reduced, to the extent that any harm or injuries were the result of, in whole or in
15 part, the negligent or intentional acts or omissions of third parties.

16 **ELEVENTH DEFENSE**

17 This action, in whole or in part, is not maintainable as a class action because
18 the proposed classes do not satisfy the requirements for class certification under
19 Federal Rule of Civil Procedure 23, including, but not limited to, the class definitions,
20 ascertainability, numerosity, commonality, typicality, adequacy of representation,
21 superiority, and manageability. The damages sought by Plaintiff on behalf of the
22 purported class cannot be recovered without specific proof by each purported class
23 member that he or she has been injured.

24 **TWELFTH DEFENSE**

25 Spring EQ is informed and believes that Plaintiff’s claims and the claims of
26 the putative class members are barred in whole or in part as a result of their failure
27 to mitigate their alleged damages, if any, and any recovery should be reduced in
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1 proportion to their failure to mitigate such damages.

2 **THIRTEENTH DEFENSE**

3 Spring EQ's actions were proper and legal, and at all times it acted with good
4 faith and without malice. Thus, to the extent there was any violation of the TCPA,
5 which Spring EQ denies, such violation(s) were not knowing and willful.

6 **FOURTEENTH DEFENSE**

7 To the extent there was any violation of the TCPA, which Spring EQ denies,
8 Spring EQ's actions were not knowing and/or willful because any violation was
9 unintentional and the result of a *bona fide* error despite the maintenance of procedures
10 reasonably adapted to avoid such violations.

11 **FIFTEENTH DEFENSE**

12 Spring EQ is informed and believes that Plaintiff and the putative class
13 members have not sustained any actual injury as a result of the alleged violations of
14 the TCPA. Plaintiff and the putative class members must sustain an injury in fact
15 for each individual call for which Plaintiff and the putative class members claim a
16 violation.

17 **SIXTEENTH DEFENSE**

18 By reason of Plaintiff's and the putative class members' inaction with respect
19 to and/or ratification of the calls he alleges were made by Spring EQ, Plaintiff and
20 the putative class members are estopped from recovery herein and Plaintiff and the
21 putative class members' claims against Spring EQ are barred by the doctrines of
22 waiver and/or estoppel (including *res judicata*, collateral estoppel, and judicial
23 estoppel).

24 **SEVENTEENTH DEFENSE**

25 Spring EQ's compliance with the statutes, rules, and regulations which govern
26 the subject matter of this lawsuit precludes its liability to Plaintiff and the putative
27 class members.

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EIGHTEENTH DEFENSE

Application of the TCPA, as interpreted by the FCC, violates the First Amendment of the U.S. Constitution because such application relies upon content-based restrictions of protected speech. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015) (“Government regulation of speech is content-based if a law applies to particular speech because of the topic discussed or the idea or message expressed.”).

NINETEENTH DEFENSE

The TCPA is unconstitutionally vague because the restrictions imposed by the TCPA do not give a person of ordinary intelligence adequate notice of the conduct that is prohibited. *See Grayned v. City of Rockford*, 408 U.S. 104, 108 (1972).

TWENTIETH DEFENSE

Any award of punitive or statutory damages against Defendant would be unconstitutional as violative of the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution, and the Excessive Fines Clause of the Eighth Amendment to the U.S. Constitution.

TWENTY-FIRST DEFENSE

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. *See Golan v. Veritas Entm’t, LLC*, No. 4:14CV00069 ERW, 2017 U.S. Dist. LEXIS 144501, at *10 (E.D. Mo. Sept. 7, 2017) (“[t]he TCPA’s statutory damages clause is constitutional, but a specific damages award may be unconstitutional if it is ‘so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable.’” (quoting *Capitol Records, Inc. v. Thomas-Rasset*, 692 F.3d 899, 907 (8th Cir. 2012))).

1 **TWENTY-SECOND DEFENSE**

2 The allegations of the First Amended Complaint, and the purported cause of
3 action alleged in the First Amended Complaint, are not pleaded with sufficient
4 particularity, are uncertain, vague, ambiguous and unintelligible, and fail to meet
5 the applicable pleading requirements.

6 **TWENTY-THIRD DEFENSE**

7 Plaintiff’s and the putative class members’ claims are barred, in whole or in
8 part, because Plaintiff’s and the putative class members’ requested relief is too
9 speculative and/or remote and/or impossible to prove and/or allocate.

10 **TWENTY-FOURTH DEFENSE**

11 Spring EQ acted in good faith in any and all interactions with Plaintiff and
12 the putative class members and did not directly or indirectly perform any acts
13 whatsoever which would constitute a violation of any rights of Plaintiff and the
14 putative class members or any duty, if any, owed to Plaintiff and the putative class
15 members.

16 **TWENTY-FIFTH DEFENSE**

17 Plaintiff’s and the putative class members’ claims fail or are otherwise barred,
18 in whole or in part, because the messages—to the extent they occurred—were made
19 with the prior express consent of Plaintiff or someone acting on Plaintiff’s behalf
20 and the purported class members as owners/subscribers or the regular users of the
21 subject phone and/or other parties, persons, and entities acting on their
22 representative behalves.

23 **TWENTY-SIXTH DEFENSE**

24 Plaintiff’s and the putative class members’ claims fail or are otherwise barred,
25 in whole or in part, because the messages—to the extent they occurred—were made
26 with the prior express invitation or permission of Plaintiff or someone acting on
27 Plaintiff’s behalf and the purported class members as owners/subscribers or the
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1 regular users of the subject phone and/or other parties, persons, and entities acting
2 on their representative behalves.

3 **TWENTY-SEVENTH DEFENSE**

4 Spring EQ reserves the right to assert arbitration against Plaintiff and/or any,
5 each, every, and all class members.

6 **TWENTY-EIGHTH DEFENSE**

7 Plaintiff’s and the putative class members’ claims are barred, in whole or in
8 part, because Spring EQ has established and implemented written procedures to
9 comply with the National DNC rules.

10 **TWENTY-NINETH DEFENSE**

11 Aggregated statutory damages in TCPA class actions are so severe and
12 oppressive as to be wholly disproportionate to the offense and in certain extreme
13 circumstances, subject to constitutional due process limitations. Thus, as applied in
14 this case, any aggregated damages award must be evaluated under the *Six Mexican*
15 *Workers* test. *See Wakefield v. ViSalus, Inc.*, 51 F.4th 1109, 1123 (9th Cir. 2022)
16 (“*Six Mexican Workers* provides further guidance for determining whether a
17 particular statutory damages award is disproportionately punitive in the aggregate”
18 ... The test requires a Court to consider: “1) the amount of award to each plaintiff, 2)
19 the total award, 3) the nature and persistence of the violations, 4) the extent of the
20 defendant's culpability, 5) damage awards in similar cases, 6) the substantive or
21 technical nature of the violations, and 7) the circumstances of each case.”).

22 **THIRTIETH DEFENSE**

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

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COUNTERCLAIM

Spring EQ LLC v. Robert Mason

JURISDICTION

1. Plaintiff in the present action is Robert Mason (“Plaintiff”), docketed in the United States District Court for the Central District of California, 5:24-cv-01833 (“Action”).

2. Defendant in the Action and Counterclaimant is Spring EQ LLC (“Spring EQ”).

3. If the Court has subject matter over the Action, then the Court has jurisdiction over this Counterclaim pursuant to 28 U.S.C. § 1367(a) as the Counterclaim arises out of the same transaction or occurrence as Plaintiff’s claim.

BACKGROUND

4. On or around January 24, 2024, Plaintiff, or his designee, visited https://www.lendingtree.com/forms/he/mulberry/he_msg_wlt_city (“LendingTree website”) and gave Spring EQ (among others) prior express consent to call his telephone number, (909) XXX-2070.

5. During Plaintiff’s visit to the LendingTree website, Plaintiff submitted a form requesting information from up to five lenders, including Spring EQ.

6. The disclosure on the LendingTree website clearly states that the consumer “consents” to be called by “up to 5” of LendingTree’s “Network Partners.”

7. At the time Plaintiff accessed the LendingTree website, Spring EQ was listed as a “Network Partner”.

8. Prior to Plaintiff receiving any text messages from Spring EQ, therefore, Plaintiff provided his consent to be contacted and provided his contact information (“opt-in information”), requesting phone calls and messages from the lenders listed as a “Network “Partner.”

1 9. On information and belief, Plaintiff, or his designee, provided the opt in
2 information so that Plaintiff would receive messages from Spring EQ and others so
3 that he could claim the messages were unwanted and in violation of the TCPA, even
4 though no other person would benefit.

5 10. The form on the LendingTree website also included a disclosure to
6 establish Plaintiff's consent to receive phone calls and/or text messages.

7 11. The IP address associated with that opt in information ties to an Internet
8 connected device in Highland, California.

9 12. The opt-in information provided Spring EQ with Plaintiff's phone
10 number, (909) XXX-2070 on or about January 24, 2024.

11 13. Having received consent and permission to contact Plaintiff, Spring EQ
12 contacted Plaintiff at the phone number (909) XXX-2070.

13 14. Plaintiff knew, before filing this suit on August 27, 2024, that either he
14 or some third party on his behalf, had opted in to receive phone calls and messages
15 at (909) XXX-2070.

16 15. On information and belief, this was a setup made under false pretenses.

17 16. Plaintiff knew that he opted in to receive phone calls and text messages,
18 and that businesses like Spring EQ would rely on that opt in information to place
19 phone calls and text messages to his number.

20 17. On information and belief, instead of correcting the opt in information,
21 Plaintiff intentionally failed to simply ask Spring EQ to stop the text messages he
22 was receiving in order to drive up his settlement demand and, when extorted
23 settlement was not forthcoming, he filed suit falsely claiming that the text messages
24 were unsolicited in his broader efforts to collect money under false pretenses via his
25 TCPA claims.

26 18. Spring EQ reasonably relied on the fact that Plaintiff had consented to
27 receive phone messages at (909) XXX-2070.

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1 19. Spring EQ took actions based on that consent including incurring costs
2 for employee time and resources to call Plaintiff as he requested and solicited.

3 20. In addition, Spring EQ has needed to engage attorneys and incur costs
4 associated with defending Plaintiff’s spurious and fraudulently induced lawsuit – all
5 based on its reasonable reliance on Plaintiff’s consent to receive phone calls and text
6 messages from Spring EQ, and others.

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8 **COUNTERCLAIM I—FRAUD**

9 21. Spring EQ incorporates the foregoing paragraphs as if set forth at length
10 herein.

11 22. On January 24, 2024, Plaintiff visited the LendingTree website and
12 represented that he wanted to be contacted by LendingTree’s Network Partners for
13 the purpose of receiving lending quotes.

14 23. Plaintiff made a representation to LendingTree on January 24, 2024 that
15 he wished to be contacted by LendingTree’s Network Partners.

16 24. Based upon information and belief, Plaintiff made the representation to
17 LendingTree with the reasonable expectation that LendingTree would communicate
18 this information to its Network Partners, including Spring EQ, for purposes of
19 learning about lending products and potentially obtaining lending-related goods or
20 services.

21 25. Based upon information and belief, Plaintiff knew that the
22 representation he made to LendingTree was false—as he did not want to be contacted
23 by LendingTree’s Network Partners for the purpose of learning about lending
24 products and potentially obtaining lending-related goods or services. Rather he
25 wished to receive messages solely to set up a TCPA lawsuit.

26 26. Plaintiff filed a TCPA lawsuit for messages he received on the same day
27 he requested to be contacted by LendingTree’s Network Partners.
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1 27. Based upon information and belief, Plaintiff knew that the
2 representation that he wished to be contacted by LendingTree’s Network Partners
3 was false when he made the request on LendingTree’s website.

4 28. Spring EQ contacted Plaintiff at his phone number (909) XXX-2070 for
5 the same purpose for which he consented to be contacted, upon reliance on Plaintiff’s
6 representation and the opt in information submitted by Plaintiff.

7 29. Plaintiff’s representation that he wanted to be contacted by
8 LendingTree’s Network Partners for the purpose of learning about and potentially
9 purchasing lending-related goods or services was the primary and only reason that
10 Spring EQ decided to contact Plaintiff.

11 30. Spring EQ would not have contacted Plaintiff had he not represented
12 that he wanted to be contacted by LendingTree’s Network Partners.

13 31. Spring EQ has been damaged by Plaintiff’s misrepresentation in the
14 form of wasted call center resources, ongoing fees and costs, prior expenditures,
15 reputational damage, business disruption, and the costs of investigation and defense.

16 32. Spring EQ’s reliance on Plaintiff’s representation that he wished to be
17 contacted by LendingTree’s Network Partners is the primary factor that has caused
18 the above harm to Spring EQ.

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20 **COUNTERCLAIM II– FRAUD BY NONDISCLOSURE**

21 33. Spring EQ incorporates the foregoing paragraphs as if set forth at length
22 herein.

23 34. Alternatively, Plaintiff knew or had reason to know prior to his filing of
24 this suit that he affirmatively gave Spring EQ consent to receive phone calls from
25 Spring EQ.

26 35. Plaintiff took no actions to correct that opt-in, including failing to ask to
27 be placed on Spring EQ’s Do Not Call list.
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1 36. To the extent Plaintiff did not wish to receive phone calls or messages
2 at phone number (909) XXX-2070, he intentionally concealed from or failed to
3 disclose that fact to Spring EQ.

4 37. Because Plaintiff was the person with the most knowledge related to
5 whether he wished to receive phone calls and messages at his phone number (909)
6 XXX-2070, and because he was well aware of potential liability under the TCPA,
7 Plaintiff had a duty to disclose to Spring EQ that he did not wish to receive the phone
8 calls and messages.

9 38. Plaintiff's failure to disclose his alleged desire to not receive phone calls
10 and messages was material because he knew or should have known that Spring EQ
11 was relying on an opt-in information.

12 39. Plaintiff also knew that Spring EQ would be ignorant of the fact that
13 Plaintiff allegedly did not wish to receive the phone calls and messages, and that
14 Spring EQ would not have had an opportunity to discover that fact without Plaintiff
15 telling Spring EQ.

16 40. Plaintiff, however, was intentionally silent when he had a duty to speak.

17 41. By failing to disclose that he allegedly did not wish to receive phone
18 calls, Plaintiff intended Spring EQ to place phone calls and text messages that it
19 believed had been requested and consented to by Plaintiff.

20 42. Spring EQ expended both employee time and call center resources to
21 fulfill its contractual obligations based on Plaintiff's failure to disclose.

22 43. Despite knowing about his opt-in and failing to disclose to Spring EQ
23 that he allegedly did not want to receive the phone calls or text messages, Plaintiff
24 later claimed that those messages were made without his consent in his demand letter
25 to Spring EQ and subsequent lawsuit.

26 44. Spring EQ then sued Plaintiff based on his failure to disclose, causing
27 Spring EQ to incur attorneys' fees and costs in defending against this false suit.
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PRAYER FOR RELIEF

WHEREFORE, Spring EQ prays for relief and judgment, as follows:

A. That the First Amended Complaint be dismissed with prejudice;

B. That judgment be rendered in favor of Spring EQ against Plaintiff with respect to the Counterclaims;

C. That Plaintiff take nothing by reason of the First Amended Complaint;

D. That Spring EQ be awarded its cost of the suit and reasonable attorneys’ fees incurred in defense of this action to the fullest extent allowed by law; and,

E. For such other relief the Court deems just and proper.

JURY TRIAL DEMAND

Spring EQ hereby demands a trial by jury.

Dated: February 5, 2025

TROUTMAN AMIN, LLP

By: /s/ Brittany A. Andres

Eric J. Troutman
Puja J. Amin
Brittany A. Andres

Attorneys for Defendant SPRING EQ LLC

CERTIFICATE OF SERVICE

I hereby certify that on February 5, 2025, a copy of the foregoing was served by ECF to counsel of record.

/s/ Brittany A. Andres
Brittany A. Andres