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18 **UNITED STATES DISTRICT COURT**  
19 **DISTRICT OF NEVADA**

20 STEPHAN CAMPBELL, *on behalf of himself*  
21 *and all others similarly situated,*

CASE NO.: 2:23-cv-00861

22 Plaintiff,

23 v.

24 EVERYTHING BREAKS, INC.,

25 Defendant.  
26 \_\_\_\_\_/

27 **DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO**  
28 **PLAINTIFF’S CLASS ACTION COMPLAINT**

Defendant, Everything Breaks, Inc., (“Everything Breaks” or “Defendant”) by and through the undersigned attorneys, hereby responds to the Complaint filed by Plaintiff, Stephan Campbell (“Plaintiff”), as follows:

**INTRODUCTION**

1  
2 1. Defendant admits Plaintiff seeks to assert claims against it on behalf of a nationwide  
3 class pursuant to the Telephone Consumer Protection act, 47 U.S.C § 227, et seq. (“TCPA”). However,  
4 Defendant denies any actionable conduct and denies violating the law, including the TCPA.

5  
6 2. Defendant denies the allegations contained in paragraph 2 of the Complaint.  
7 The remainder of paragraph 2 of the Complaint consists of legal conclusions, statements, and  
8 characterizations that are not allegations capable of admission or denial. To the extent a response is  
9 required, Defendant denies such conclusions, statements, and characterizations.

10 3. Defendant denies the allegations contained in paragraph 3 of the Complaint.

11 4. Defendant denies the allegations contained in paragraph 4 of the Complaint.

12  
13 5. Paragraph 5 consists of the Complaint consists of legal conclusions, statements, and  
14 characterizations that are not allegations capable of admission or denial. To the extent a response is  
15 required, Defendant denies such conclusions, statements, and characterizations.

16 6. Paragraph 6 of the Complaint consists of legal conclusions, statements, and  
17 characterizations that are not allegations capable of admission or denial. To the extent a response is  
18 required, Defendant denies such conclusions, statement and characterizations.

19 7. Defendant admits Plaintiff seeks to assert claims against it on behalf of a nationwide  
20 class pursuant to the TCPA. However, Defendant denies any actionable conduct, denies violating the  
21 law, including the TCPA, denies that this action can be maintained as a nationwide class action.

**JURISDICTION AND VENUE**

22  
23  
24 8. Paragraph 8 of the Complaint consists of legal conclusions, statements, and  
25 characterizations that are not allegations capable of admission or denial. To the extent a response is  
26 required, Defendant denies such conclusions, statements, and characterizations.

27 9. Paragraph 9 of the Complaint consists of legal conclusions, statements, and  
28

1 characterizations that are not allegations capable of admission or denial. To the extent a response is  
2 required, Defendant denies such conclusions, statements, and characterizations.

3 10. Paragraph 10 of the Complaint consists of legal conclusions, statements, and  
4 characterizations that are not allegations capable of admission or denial. To the extent a response is  
5 required, Defendant denies such conclusions, statements, and characterizations.  
6

7 **PARTIES**

8 11. Defendant is without knowledge or information sufficient to form a belief as to the  
9 truth of the allegations contained in paragraph 11 of the Complaint. Accordingly, Defendant denies  
10 such allegations.

11 12. Paragraph 12 of the Complaint consists of legal conclusions, statements, and  
12 characterizations that are not allegations capable of admission or denial. To the extent a response is  
13 required, Defendant denies such conclusions, statements, and characterizations.  
14

15 13. Defendant admits that it is a Delaware corporation with offices in Texas.

16 14. Paragraph 14 of the Complaint consists of legal conclusions, statements, and  
17 characterizations that are not allegations capable of admission or denial. To the extent a response is  
18 required, Defendant denies such conclusions, statements, and characterizations.  
19

20 **TCPA BACKGROUND**

21 15. Paragraph 15 of the Complaint consists of legal conclusions, statements, and  
22 characterizations that are not allegations capable of admission or denial. To the extent a response is  
23 required, Defendant denies such conclusions, statements, and characterizations.

24 16. Paragraph 16 of the Complaint consists of legal conclusions, statements, and  
25 characterizations that are not allegations capable of admission or denial. To the extent a response is  
26 required, Defendant denies such conclusions, statements, and characterizations.  
27

28 17. Paragraph 17 of the Complaint consists of legal conclusions, statements, and

1 characterizations that are not allegations capable of admission or denial. To the extent a response is  
2 required, Defendant denies such conclusions, statements, and characterizations.

3 18. Paragraph 18 of the Complaint consists of legal conclusions, statements, and  
4 characterizations that are not allegations capable of admission or denial. To the extent a response is  
5 required, Defendant denies such conclusions, statements, and characterizations.  
6

7 19. Paragraph 19 of the Complaint consists of legal conclusions, statements, and  
8 characterizations that are not allegations capable of admission or denial. To the extent a response is  
9 required, Defendant denies such conclusions, statements, and characterizations.

10 20. Paragraph 20 of the Complaint consists of legal conclusions, statements, and  
11 characterizations that are not allegations capable of admission or denial. To the extent a response is  
12 required, Defendant denies such conclusions, statements, and characterizations.  
13

14 21. Paragraph 21 of the Complaint consists of legal conclusions, statements, and  
15 characterizations that are not allegations capable of admission or denial. To the extent a response is  
16 required, Defendant denies such conclusions, statements, and characterizations.

17 22. Paragraph 22 of the Complaint consists of legal conclusions, statements, and  
18 characterizations that are not allegations capable of admission or denial. To the extent a response is  
19 required, Defendant denies such conclusions, statements, and characterizations.  
20

21 23. Paragraph 23 of the Complaint consists of legal conclusions, statements, and  
22 characterizations that are not allegations capable of admission or denial. To the extent a response is  
23 required, Defendant denies such conclusions, statements, and characterizations.

24 24. Paragraph 24 of the Complaint consists of legal conclusions, statements, and  
25 characterizations that are not allegations capable of admission or denial. To the extent a response is  
26 required, Defendant denies such conclusions, statements, and characterizations.  
27

28 25. Paragraph 25 of the Complaint consists of legal conclusions, statements, and

1 characterizations that are not allegations capable of admission or denial. To the extent a response is  
2 required, Defendant denies such conclusions, statements, and characterizations.

3 26. Paragraph 26 of the Complaint consists of legal conclusions, statements, and  
4 characterizations that are not allegations capable of admission or denial. To the extent a response is  
5 required, Defendant denies such conclusions, statements, and characterizations.  
6

7 27. Paragraph 27 of the Complaint consists of legal conclusions, statements, and  
8 characterizations that are not allegations capable of admission or denial. To the extent a response is  
9 required, Defendant denies such conclusions, statements, and characterizations.

10 28. Paragraph 28 of the Complaint consists of legal conclusions, statements, and  
11 characterizations that are not allegations capable of admission or denial. To the extent a response is  
12 required, Defendant denies such conclusions, statements, and characterizations.  
13

14 29. Paragraph 29 of the Complaint consists of legal conclusions, statements, and  
15 characterizations that are not allegations capable of admission or denial. To the extent a response is  
16 required, Defendant denies such conclusions, statements, and characterizations.

17 30. Paragraph 30 of the Complaint consists of legal conclusions, statements, and  
18 characterizations that are not allegations capable of admission or denial. To the extent a response is  
19 required, Defendant denies such conclusions, statements, and characterizations.  
20

21 31. Paragraph 31 of the Complaint consists of legal conclusions, statements, and  
22 characterizations that are not allegations capable of admission or denial. To the extent a response is  
23 required, Defendant denies such conclusions, statements, and characterizations.

24 32. Paragraph 32 of the Complaint consists of legal conclusions, statements, and  
25 characterizations that are not allegations capable of admission or denial. To the extent a response is  
26 required, Defendant denies such conclusions, statements, and characterizations.  
27  
28

**FACTUAL ALLEGATIONS**

1  
2           33. Defendant is without knowledge or information sufficient to form a belief as to the  
3 truth of the allegations contained in paragraph 33 of the Complaint, particularly where, as here,  
4 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
5 allegations.  
6

7           34. Defendant is without knowledge or information sufficient to form a belief as to the  
8 truth of the allegations contained in paragraph 34 of the Complaint, particularly where, as here,  
9 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
10 allegations.  
11

12           35. Defendant is without knowledge or information sufficient to form a belief as to the  
13 truth of the allegations contained in paragraph 35 of the Complaint, particularly where, as here,  
14 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
15 allegations.  
16

17           36. Defendant is without knowledge or information sufficient to form a belief as to the  
18 truth of the allegations contained in paragraph 36 of the Complaint, particularly where, as here,  
19 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
20 allegations.  
21

22           37. Defendant is without knowledge or information sufficient to form a belief as to the  
23 truth of the allegations contained in paragraph 37 of the Complaint, particularly where, as here,  
24 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
25 allegations.  
26

27           38. Defendant is without knowledge or information sufficient to form a belief as to the  
28 truth of the allegations contained in paragraph 38 of the Complaint, particularly where, as here,  
Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such

1 allegations.

2           39. Defendant is without knowledge or information sufficient to form a belief as to the  
3 truth of the allegations contained in paragraph 39 of the Complaint, particularly where, as here,  
4 Plaintiff fails to allege his complete telephone number and fails to allege the phone numbers the alleged  
5 calls came from. Accordingly, Defendant denies such allegations.  
6

7           40. Defendant is without knowledge or information sufficient to form a belief as to the  
8 truth of the allegations contained in paragraph 40 of the Complaint, particularly where, as here,  
9 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
10 allegations.

11           41. Defendant is without knowledge or information sufficient to form a belief as to the  
12 truth of the allegations contained in paragraph 41 of the Complaint, particularly where, as here,  
13 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
14 allegations.  
15

16           42. Defendant is without knowledge or information sufficient to form a belief as to the  
17 truth of the allegations contained in paragraph 42 of the Complaint, particularly where, as here,  
18 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
19 allegations.  
20

21           43. Defendant is without knowledge or information sufficient to form a belief as to the  
22 truth of the allegations contained in paragraph 43 of the Complaint, particularly where, as here,  
23 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
24 allegations.

25           44. Defendant is without knowledge or information sufficient to form a belief as to the  
26 truth of the allegations contained in paragraph 44 of the Complaint, particularly where, as here,  
27 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
28

1 allegations.

2 45. Defendant is without knowledge or information sufficient to form a belief as to the  
3 truth of the allegations contained in paragraph 45 of the Complaint, particularly where, as here,  
4 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
5 allegations.  
6

7 46. Defendant is without knowledge or information sufficient to form a belief as to the  
8 truth of the allegations contained in paragraph 46 of the Complaint, particularly where, as here,  
9 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
10 allegations.  
11

12 47. Defendant is without knowledge or information sufficient to form a belief as to the  
13 truth of the allegations contained in paragraph 47 of the Complaint, particularly where, as here,  
14 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
15 allegations.  
16

17 48. Defendant denies the allegations contained in paragraph 48 of the Complaint.

18 49. Defendant denies the allegations contained in paragraph 49 of the Complaint.

19 50. Defendant denies the allegations contained in paragraph 50 of the Complaint.

20 51. Defendant denies the allegations contained in paragraph 51 of the Complaint.

21 52. Paragraph 52 of the Complaint consists of legal conclusions, statements, and  
22 characterizations that are not allegations capable of admission or denial. To the extent a response is  
23 required, Defendant denies such conclusions, statements, and characterizations.

24 53. Paragraph 53 of the Complaint consists of legal conclusions, statements, and  
25 characterizations that are not allegations capable of admission or denial. To the extent a response is  
26 required, Defendant denies such conclusions, statements, and characterizations.  
27

28 54. Defendant denies the allegations contained in paragraph 54 of the Complaint. The



1 remainder of paragraph 54 consists of legal conclusions, statements, and characterizations that are not  
2 allegations capable of admission or denial. To the extent a response is required, Defendant denies such  
3 conclusion, statements, and characterizations.

4  
5 **DEFENDANT'S LIABILITY**

6 55. Defendant denies the allegations contained in paragraph 55 of the Complaint.  
7 The remainder of paragraph 55 consists of legal conclusions, statements, and characterizations that are  
8 not allegations capable of admission or denial. To the extent a response is required, Defendant denies  
9 such conclusion, statements, and characterizations.

10 56. Defendant is without knowledge or information sufficient to form a belief as to the  
11 truth of the allegations contained in paragraph 56 of the Complaint, particularly where, as here,  
12 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
13 allegations. The remainder of paragraph 56 consists of legal conclusions, statements, and  
14 characterizations that are not allegations capable of admission or denial. To the extent a response is  
15 required, Defendant denies such conclusion, statements, and characterizations.

17 57. Paragraph 57 of the Complaint consists of legal conclusions, statements, and  
18 characterizations that are not allegations capable of admission or denial. To the extent a response is  
19 required, Defendant denies such conclusions, statements, and characterizations.

20 58. Paragraph 58 of the Complaint consists of legal conclusions, statements, and  
21 characterizations that are not allegations capable of admission or denial. To the extent a response is  
22 required, Defendant denies such conclusions, statements, and characterizations.

24 59. Defendant is without knowledge or information sufficient to form a belief as to the  
25 truth of the allegations contained in paragraph 59 of the Complaint, particularly where, as here,  
26 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
27 allegations. The remainder of paragraph 59 consists of legal conclusions, statements, and  
28

1 characterizations that are not allegations capable of admission or denial. To the extent a response is  
2 required, Defendant denies such conclusion, statements, and characterizations.

3 60. Paragraph 60 of the Complaint consists of legal conclusions, statements, and  
4 characterizations that are not allegations capable of admission or denial. To the extent a response is  
5 required, Defendant denies such conclusions, statements, and characterizations.  
6

7 61. Paragraph 61 of the Complaint consists of legal conclusions, statements, and  
8 characterizations that are not allegations capable of admission or denial. To the extent a response is  
9 required, Defendant denies such conclusions, statements, and characterizations.

10 **CLASS ACTION ALLEGATIONS**

11 62. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
12 may be properly maintained as a class action. Defendant denies the remaining allegations, including  
13 the proposed class definitions, contained in paragraph 62 of the Complaint.  
14

15 63. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
16 may be properly maintained as a class action. The remainder of paragraph 63 of the Complaint consists  
17 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
18 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
19 characterizations.  
20

21 64. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
22 may be properly maintained as a class action. The remainder of paragraph 64 of the Complaint consists  
23 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
24 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
25 characterizations.

26 65. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
27 may be properly maintained as a class action. The remainder of paragraph 65 of the Complaint,  
28

1 including subparagraphs (a) through (e), consists of legal conclusions, statements, and  
2 characterizations that are not allegations capable of admission or denial. To the extent a response is  
3 required, Defendant denies such conclusions, statements, and characterizations.

4           66. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
5 may be properly maintained as a class action. The remainder of paragraph 66 of the Complaint consists  
6 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
7 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
8 characterizations.

9           67. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
10 may be properly maintained as a class action. The remainder of paragraph 67 of the Complaint,  
11 including subparagraphs (a) through (f), consists of legal conclusions, statements, and  
12 characterizations that are not allegations capable of admission or denial. To the extent a response is  
13 required, Defendant denies such conclusions, statements, and characterizations.

14           68. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
15 may be properly maintained as a class action. The remainder of paragraph 68 of the Complaint consists  
16 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
17 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
18 characterizations.

19           69. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
20 may be properly maintained as a class action. The remainder of paragraph 69 of the Complaint consists  
21 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
22 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
23 characterizations.

24           70. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
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1 may be properly maintained as a class action. The remainder of paragraph 70 of the Complaint consists  
2 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
3 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
4 characterizations.

5  
6 71. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
7 may be properly maintained as a class action. The remainder of paragraph 71 of the Complaint consists  
8 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
9 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
10 characterizations.

11  
12 72. Plaintiff seeks to represent a nationwide class but denies this action may be properly  
13 maintained as a class action. The remainder of paragraph 72 of the Complaint consists of legal  
14 conclusions, statements, and characterizations that are not allegations capable of admission or denial.  
15 To the extent a response is required, Defendant denies such conclusions, statements, and  
16 characterizations.

17  
18 73. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
19 may be properly maintained as a class action. The remainder of paragraph 73 of the Complaint consists  
20 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
21 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
22 characterizations.

23  
24 74. Defendant admits Plaintiff seeks to represent a nationwide class but denies this action  
25 may be properly maintained as a class action. The remainder of paragraph 74 of the Complaint consists  
26 of legal conclusions, statements, and characterizations that are not allegations capable of admission or  
27 denial. To the extent a response is required, Defendant denies such conclusions, statements, and  
28 characterizations.



1 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
2 allegations.

3 81. Paragraph 81 of the Complaint consists of legal conclusions, statements, and  
4 characterizations that are not allegations capable of admission or denial. To the extent a response is  
5 required, Defendant denies such conclusions, statements, and characterizations.  
6

7 82. Paragraph 82 of the Complaint consists of legal conclusions, statements, and  
8 characterizations that are not allegations capable of admission or denial. To the extent a response is  
9 required, Defendant denies such conclusions, statements, and characterizations.

10 **SECOND CAUSE OF ACTION**  
11 **Violations of the TCPA, 47 U.S.C. § 227(c)**  
12 **(On behalf of Plaintiff and the Policy Class)**

13 83. Defendant incorporates its responses to paragraphs 1 through 82 of the Complaint as if  
14 fully set forth herein.

15 84. Defendant is without knowledge or information sufficient to form a belief as to the  
16 truth of the allegations contained in paragraph 84 of the Complaint, particularly where, as here,  
17 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
18 allegations.

19 85. Defendant denies the allegations contained in paragraph 85 of the Complaint.

20 86. Defendant denies the allegations contained in paragraph 86 of the Complaint.

21 87. Defendant denies the allegations contained in paragraph 87 of the Complaint.

22 88. Defendant denies the allegations contained in paragraph 88 of the Complaint.

23 89. Defendant is without knowledge or information sufficient to form a belief as to the  
24 truth of the allegations contained in paragraph 89 of the Complaint, particularly where, as here,  
25 Plaintiff fails to allege his complete telephone number. Accordingly, Defendant denies such  
26 allegations.  
27  
28

1 90. Paragraph 90 of the Complaint consists of legal conclusions, statements, and  
2 characterizations that are not allegations capable of admission or denial. To the extent a response is  
3 required, Defendant denies such conclusions, statements, and characterizations.

4 91. Paragraph 91 of the Complaint consists of legal conclusions, statements, and  
5 characterizations that are not allegations capable of admission or denial. To the extent a response is  
6 required, Defendant denies such conclusions, statements, and characterizations.  
7

### 8 **PRAYER FOR RELIEF**

9 In response to the **WHEREFORE** clause following paragraph 91 of the Complaint, including  
10 its subsections (A) through (F), Defendant admits that Plaintiff seeks such relief but denies that  
11 Plaintiff is entitled to any relief whatsoever.

12 As to any part of the Complaint not specifically admitted, denied, or discussed with respect to  
13 Defendant, Defendant hereby denies said allegations, including, but not limited to, any allegations  
14 contained in the Complaint’s preamble, headings, subheadings, and wherefore clause. Furthermore,  
15 any averments in the Complaint to which no responsive pleadings are capable or required shall be  
16 deemed denied.  
17

### 18 **JURY DEMAND**

19 Defendant, Everything Breaks, Inc., hereby demands a trial by jury on all issues so triable.  
20

### 21 **AFFIRMATIVE DEFENSES**

22 Without assuming the burden of proof where it otherwise rests with Plaintiff, Defendant pleads  
23 the following Affirmative Defenses to Plaintiff’s Complaint.

### 24 **FIRST AFFIRMATIVE DEFENSE**

25 Plaintiff’s claims and/or the claims of the putative Class Plaintiff seeks to represent fail or  
26 otherwise are barred, in whole or in part, or are limited because to the extent the subject telephone  
27 calls occurred, such telephone calls were invited, permitted, consented to, and/or made pursuant to a  
28

1 personal or an established business relationship.

2 **SECOND AFFIRMATIVE DEFENSE**

3 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
4 otherwise are barred, in whole or in part, or are limited because Plaintiff cannot state a claim against  
5 Defendant upon which relief can be granted. Defendant did not (and does not) make telephone calls  
6 to individuals listed on the National Do-Not-Call Registry; particularly without the prior express  
7 written consent of the called party as Plaintiff seeks to allege in the Complaint.  
8

9 **THIRD AFFIRMATIVE DEFENSE**

10 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
11 otherwise are barred, in whole or in part, or are limited because Plaintiff fails to state and cannot state  
12 a plausible cause of action for class relief pursuant to Federal Rule of Civil Procedure 23 in that, among  
13 other things, the claims Plaintiff seeks to assert cannot be common or typical of the claims of the  
14 putative classes, nor is class relief superior to other available methods for fairly and efficiently  
15 adjudicating the claims Plaintiff attempts to assert.  
16

17 **FOURTH AFFIRMATIVE DEFENSE**

18 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
19 otherwise are barred, in whole or in part, or are limited by the doctrine of unclean hands. Plaintiff  
20 seeks out, invites, and welcomes telephone calls, including, *arguendo*, the subject telephone calls, in  
21 an effort to manufacture and pursue litigation on a class basis, not to seek compensation for damages  
22 allegedly suffered, as contemplated by statute, but rather to seek to enrich himself by seeking  
23 disproportionate payments from, here, Defendant.  
24

25 **FIFTH AFFIRMATIVE DEFENSE**

26 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
27 otherwise are barred, in whole or in part, or are limited because Plaintiff fails to sufficiently allege that  
28



1 a class action is proper or appropriate, and therefore Plaintiff is not entitled to maintain this lawsuit as  
2 a collective action. Among other things, Plaintiff fails to allege, because she cannot allege, any facts  
3 to suggest there are any other members of the proposed classes. Instead, Plaintiff merely hypothesizes  
4 there may be others. Similarly, Plaintiff has not alleged, because he cannot allege, any facts to  
5 plausibly support the claim that there are common issues of fact and law, that Plaintiff's claims are  
6 typical of the proposed classes, or that Plaintiff will fairly and adequately protect the interests of the  
7 proposed classes. Rather, Plaintiff's Complaint merely parrots the requisite language without any  
8 factual insight. Accordingly, Plaintiff cannot satisfy the numerosity, commonality, typicality, and  
9 adequate representative requirements for this case to proceed as a class action.  
10

11 **SIXTH AFFIRMATIVE DEFENSE**

12 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
13 otherwise are barred, in whole or in part, or are limited because the alleged damages to Plaintiff and/or  
14 the putative classes Plaintiff seeks to represent were caused in whole or in part by the acts or omissions  
15 of third parties over which Defendant had and has no control of/over, and/or by the acts or omissions  
16 of Plaintiff and/or the putative class members.  
17

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
20 otherwise are barred, in whole or in part, or are limited because Plaintiff did not sustain any damages.  
21 To the extent Plaintiff sustained any damages, such damages are *de minimis* and non-actionable, and  
22 any such damages are not representative and/or the same as the putative class members Plaintiff seeks  
23 to represent.  
24

25 **EIGHT AFFIRMATIVE DEFENSE**

26 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
27 otherwise are barred, in whole or in part, or are limited by the doctrine of estoppel.  
28

1 **NINETH AFFIRMATIVE DEFENSE**

2 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
3 otherwise are barred, in whole or in part, or are limited by the doctrine of waiver.

4 **TENTH AFFIRMATIVE DEFENSE**

5 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
6 otherwise are barred, in whole or in part, or are limited because any alleged wrongdoing by Defendant,  
7 which Defendant denies, was caused by mistake. Indeed, Defendant acted reasonably and in good faith  
8 at all material times based on all relevant facts and circumstances known by it at the time it acted.

9 **ELEVENTH AFFIRMATIVE DEFENSE**

10 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
11 otherwise are barred, in whole or in part, or are limited because Plaintiff and/or the putative classes  
12 failed to mitigate their damages. Accordingly, recovery (if any) should be reduced in proportion to  
13 Plaintiff's failure to mitigate such damages.

14 **TWELFTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims for injunctive relief and/or the claims for injunctive relief of the putative class  
16 Plaintiff seeks to represent fail or otherwise are barred, in whole or in part, or are limited because there  
17 is neither continuing harm nor any real and immediate danger of injury in the future to Plaintiff or the  
18 putative classes Plaintiff seeks to represent.

19 **THIRTEENTH AFFIRMATIVE DEFENSE**

20 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
21 otherwise are barred, in whole or in part, or are limited because Plaintiffs and/or the putative class  
22 members were not the intended recipient(s) of the subject telephone calls.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
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1 otherwise are barred, in whole or in part, or are limited because the statutory damages provisions of  
2 the TCPA are excessive fines and/or are grossly disproportionate to any actual harm that may have  
3 been suffered. Accordingly, such statutory damages provisions violate (1) the safeguards set forth in  
4 and/or assured by the Fifth, Sixth, Eighth, and Fourteenth Amendments of the United States  
5 Constitution and (2) the due process clause of the Fifth and Fourteenth Amendments of the United  
6 States Constitution.  
7

8 **FIFTEENTH AFFIRMATIVE DEFENSE**

9 Plaintiff's claims and/or the claims of the putative class Plaintiff seeks to represent fail or  
10 otherwise are barred, in whole or in part, or are limited because the subject telephone calls constitute  
11 commercial speech protected by the First Amendment of the United States Constitution and the  
12 imposition of liability for such telephone calls violates the First Amendment rights of the sender.  
13

14 **SIXTEENTH AFFIRMATIVE DEFENSE**

15 Plaintiff's claims and/or the claims of the putative classes Plaintiff seeks to represent fail or  
16 otherwise are barred, in whole or in part, or are limited because Plaintiff's alleged telephone number  
17 (xxx-xxx-2363) (Compl., ¶ 33) is believed to be a business phone number and not a residential  
18 telephone number that Plaintiff uses for personal calls.  
19

20 **SEVENTEENTH AFFIRMATIVE DEFENSE**

21 Plaintiff's claim and/or the claims of the non-Texas putative class members Plaintiff seeks to  
22 represent fail or otherwise are barred, in whole or part, or are limited for lack of jurisdiction. *See*  
23 *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 137 S. Ct. 1773  
24 (2017).  
25

26 **EIGHTEENTH AFFIRMATIVE DEFENSE**

27 Plaintiff's claims and/or the claims of the putative classes Plaintiff seeks to represent fail or  
28 otherwise are barred, in whole or in part, or are limited because the procedures instituted by Defendant

1 meet the standards set forth in 47 CFR § 64.1200(d).

2 **RESERVATION OF RIGHTS**

3 Defendant, Everything Breaks, Inc., reserves the right to amend or add to its affirmative  
4 defenses upon discovery of additional information or evidence or as justice so requires.

5 **WHEREFORE**, having fully answered or otherwise responded to the allegations contained in  
6 the Complaint filed by Plaintiff, Stephan Campbell, Defendant, Everything Breaks, Inc., respectfully  
7 requests this Court enter judgment as follows: (1) that Plaintiff takes nothing by virtue of the  
8 Complaint and that this Action be dismissed in its entirety; (2) that judgment be rendered in favor of  
9 Defendant; (3) that attorneys' fees and costs incurred in this Action be awarded to Defendant to the  
10 greatest extent permitted by applicable law; and (4) that Defendant be awarded such further and other  
11 relief as this Court deems just and proper.  
12

13 Dated: August **11**, 2023.

14 Respectfully submitted,

15 By: /s/ Philip Silvestri

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