

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD PSYCHOLOGY, P.A.,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

SINGLECARE SERVICES, LLC

Defendant.

Case No. CACE-18-022689

Hon. Judge John B. Bowman

**SINGLECARE SERVICES' ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF'S CLASS ACTION COMPLAINT**

Defendant SingleCare Services, LLC ("SingleCare"), through its counsel, hereby files this Answer and Affirmative Defenses to Plaintiff's Class Action Complaint. The following headings and paragraphs of this Answer correspond to the headings and paragraphs of the Complaint.

ANSWER

In response to the initial unnumbered paragraph of Plaintiff's Complaint, SingleCare admits that Plaintiff brings this suit as a putative class action stemming from facsimile transmissions. SingleCare denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment. SingleCare denies the remaining allegations of this Paragraph.

NATURE OF THE ACTION

1. SingleCare admits that Plaintiff brings this suit as a putative class action stemming from facsimile transmissions. SingleCare denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment.

2. Denied.

3. Denied.

4. Denied.

5. SingleCare admits that Plaintiff seeks injunctive relief, damages and costs, but denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment.

PARTIES

6. SingleCare is without sufficient knowledge to form a belief as to the allegations set forth in this Paragraph and, therefore, denies them.

7. SingleCare admits that it is a Delaware limited liability company with its principle place of business in Boston, Massachusetts.

JURISDICTION & VENUE

8. SingleCare admits that Plaintiff brings this suit for damages under the Telephone Consumer Protection Act (“TCPA”), but denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment. SingleCare denies the remaining allegations of this Paragraph.

9. SingleCare admits that this Court has personal jurisdiction for purposes of this action only. SingleCare denies the remaining allegations of this Paragraph.

COMMON FACTUAL ALLEGATIONS

10. Admitted.

11. SingleCare states that the documents attached to Plaintiff’s Complaint speak for themselves. Answering further, SingleCare denies the remaining allegations set forth in this Paragraph.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

FACTS SPECIFIC TO PLAINTIFF BROWARD PSYCHOLOGY

16. SingleCare states that the documents attached to Plaintiff's Complaint speak for themselves. Answering further, SingleCare denies the remaining allegations set forth in this Paragraph.

17. Denied.

18. Denied.

19. SingleCare is without sufficient knowledge to form a belief as to the allegations set forth in this Paragraph and, therefore, denies them.

CLASS ACTION ALLEGATIONS

20. SingleCare admits that Plaintiff brings this suit as a putative class action, but denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment.

21. SingleCare admits that Plaintiff brings this suit as a putative class action excluding the enumerated persons, but denies that there is any factual or legal basis for the claims alleged, for the relief sought, or for classwide treatment.

22. Denied.

23. Denied.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

FIRST CAUSE OF ACTION
VIOLATION OF 47 U.S.C. § 227

28. SingleCare incorporates by reference each of foregoing allegations as if fully set forth herein.

29. SingleCare states that this Paragraph consists of a legal conclusion to which no response is required. To the extent a response is required, SingleCare denies the allegations of this Paragraph.

30. SingleCare states that this Paragraph consists of a legal conclusion to which no response is required. To the extent a response is required, SingleCare denies the allegations of this Paragraph.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

35. Denied.

36. Denied.

SECOND CAUSE OF ACTION
VIOLATION OF 47 U.S.C. § 227

37. SingleCare incorporates by reference each of foregoing allegations as if fully set forth herein.

38. SingleCare states that this Paragraph consists of a legal conclusion to which no response is required. To the extent a response is required, SingleCare denies the allegations of this Paragraph.

39. Denied.

40. Denied.

41. Denied.

42. Denied.

AFFIRMATIVE & OTHER DEFENSES

SingleCare asserts the following affirmative and other defenses to Plaintiff's Complaint.

FIRST DEFENSE *(Prior Express Consent)*

Plaintiff's claim is barred because, on information and belief, it and/or an employee or agent provided prior express invitation or permission to receive the alleged facsimile transmission attached to the Complaint.

SECOND DEFENSE *(Lack of Standing)*

Because Plaintiff alleges solely a bare, technical statutory violation, it has suffered no actual damages and thus no injury-in-fact sufficient to confer standing.

THIRD DEFENSE *(Lack of Statutory Standing)*

Upon information and belief, Plaintiff is not the subscriber nor the owner of the fax machine that received the faxes at issue, and thus lacks statutory standing to pursue its claim.

FOURTH DEFENSE *(Laches)*

Plaintiff's claim is barred by the doctrine of laches. Plaintiff had a duty to exercise due

diligence in the instigation of classwide proceedings, but unreasonably delayed causing prejudice to SingleCare.

FIFTH DEFENSE
(Violation of the Fifth and Fourteenth Amendments)

The statutory damages provision of the TCPA, which provides for statutory damages of \$500 for each unsolicited fax sent in negligent violation of the TCPA and for \$1,500 for intentional violations regardless of whether Plaintiff suffered any actual injury, violates the Due Process Clause under the Fifth and Fourteenth Amendments to the United States Constitution, which prohibit the imposition of grossly excessive or arbitrary punishment on a defendant, and if a class were to be certified and liability were found, the statutory damages award would be grossly disproportionate to any “harm” suffered by the class members.

SIXTH DEFENSE
(Violation of the First Amendment)

As applied in this lawsuit, the TCPA violates the First Amendment of the United States Constitution because it places unconstitutional restrictions on SingleCare’s constitutional rights under the Free Speech Clause.

SEVENTH DEFENSE
(De Minimis Harm)

Plaintiff’s alleged harm, if any, was *de minimis*, and is thus unrecoverable.

EIGHTH DEFENSE
(Not the Sender)

Plaintiff’s claims are barred against SingleCare because SingleCare is not the sender of the faxes at issue and/or the faxes were sent by a third party in excess of their authority.

JURY DEMAND

SingleCare requests trial by jury of all claims that can be so tried.

PRAYER FOR RELIEF

WHEREFORE, having fully answered the Complaint, SingleCare prays for the following relief:

1. That Plaintiff takes nothing by his Complaint;
2. That the Complaint be dismissed with prejudice and judgment entered in favor of SingleCare;
3. That SingleCare be awarded its costs and reasonable attorney's fees; and
4. That SingleCare be awarded such other and further relief as the Court deems reasonable and just.

DATED: November 26, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing has been sent via the Florida Court E-Filing Portal and served via email and/or U.S. Mail on this 26th day of November, 2018, to:

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