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24 *Attorneys for Defendant Cox Communications, Inc.*

25 **IN THE UNITED STATES DISTRICT COURT**  
26 **FOR THE DISTRICT OF ARIZONA**

27 Joanne Knapper, *on behalf of herself and*  
28 *others similarly situated,*

Plaintiff,

v.

Cox Communications, Inc.,

Defendant.

Case No. 2:17-cv-00913-SPL

**DEFENDANT COX  
COMMUNICATIONS, INC.'S  
ANSWER TO PLAINTIFF'S  
FIRST AMENDED CLASS  
ACTION COMPLAINT**

1 Defendant Cox Communications, Inc. (“Defendant” or “Cox”), by and through  
2 counsel, hereby files its Answer to the First Amended Class Action Complaint of Plaintiff  
3 Joanne Knapper (“Plaintiff”). Except as expressly admitted herein, each and every  
4 allegation of the First Amended Class Action Complaint (the “First Amended Complaint”)  
5 is denied.

6 Cox responds to the specific allegations contain in the enumerated paragraphs of the  
7 First Amended Complaint, as follows:

### 8 **Nature of this Action**

9 1. Cox admits that Plaintiff filed this case on behalf of a class alleging violations  
10 of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”). Cox denies  
11 all other allegations of Paragraph 1 and denies any liability.

12 2. Cox states that Paragraph 2 accurately quotes the language of Section  
13 227(b)(1)(A)(iii) of the TCPA, but Cox denies any liability under that statute.

14 3. Cox denies the allegations of Paragraph 3.

### 15 **Jurisdiction and Venue**

16 4. Cox admits that federal courts have federal question jurisdiction over TCPA  
17 actions, but Cox denies liability.

18 5. Cox admits that venue is proper in this District, but Cox denies liability.

### 19 **Parties**

20 6. Cox is without information sufficient to admit or deny the allegations of  
21 Paragraph 6. To the extent a response is deemed necessary, Cox denies the allegations  
22 contained therein.

23 7. Cox admits that it is headquartered in Atlanta, Georgia.

### 24 **Factual Allegations**

25 8. Cox admits that it called telephone number 480-907-4074 and states further  
26 that such calls were an attempt to reach a Cox customer regarding an outstanding balance  
27 on that customer’s Cox account.

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1           9.     Cox denies the allegations of Paragraph 9.

2           10.    Cox admits that it placed calls to telephone number 480-907-4074 in an  
3 attempt to contact its customer, and not Plaintiff.

4           11.    Paragraph 11 states legal conclusions to which no response is required. To  
5 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 11.

6           12.    Paragraph 12 states legal conclusions to which no response is required. To  
7 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 12.

8           13.    Paragraph 13 states legal conclusions to which no response is required. To  
9 the extent a response is deemed necessary, Cox admits that it left at least five voice mail  
10 messages at 480-907-4074 attempting to reach its customer.

11          14.    Paragraph 14 states legal conclusions to which no response is required. To  
12 the extent a response is deemed necessary, Cox admits that it placed the calls to telephone  
13 number 480-907-4074 to reach its customer about an outstanding balance; whether such  
14 calls constitute “emergency purposes” is a legal rather than factual issue.

15          15.    Cox admits that it voluntarily placed calls to telephone number 480-907-  
16 4074 to reach its customer about an outstanding balance but denies that it intentionally  
17 placed calls to Plaintiff.

18          16.    Cox admits that it voluntarily placed calls to telephone number 480-907-  
19 4074 to reach its customer about an outstanding balance but denies that it intentionally  
20 placed calls to Plaintiff.

21          17.    Paragraph 17 states legal conclusions to which no response is required. To  
22 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 17.

23          18.    Paragraph 18 states legal conclusions to which no response is required. To  
24 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 18.

25          19.    Cox admits the allegations of Paragraph 19.

26          20.    Paragraph 20 states legal conclusions to which no response is required. To  
27 the extent a response is deemed necessary, Cox admits that Plaintiff is not, nor was, a  
28

1 customer of Cox.

2 21. Paragraph 21 states legal conclusions to which no response is required. To  
3 the extent a response is deemed necessary, Cox is without information sufficient to admit  
4 or deny the allegations of Paragraph 21 and therefore denies the same.

5 22. Cox admits that it maintains records of some of the calls it placed to  
6 telephone number 480-907-4074. Cox denies all other allegations of Paragraph 22 and  
7 denies that its records reflect that 480-907-4074 is "Plaintiff's cellular telephone number."

8 23. Paragraph 23 states legal conclusions to which no response is required. To  
9 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 23.

10 24. Cox is without information sufficient to admit or deny the allegations of  
11 Paragraph 24 and therefore denies the same.

12 25. Cox denies the allegations of Paragraph 25.

13 **Class Action Allegations**

14 26. Cox admits that Plaintiff has filed this lawsuit as a class action, but Cox  
15 denies that it is liable or that this action is properly certified as a class action except for  
16 settlement purposes only.

17 27. Cox admits that Plaintiff has filed this lawsuit as a class action, but Cox  
18 denies that it is liable or that this action is properly certified as a class action except for  
19 settlement purposes only.

20 28. Cox admits that Plaintiff has filed this lawsuit as a class action, but Cox  
21 denies that it is liable or that this action is properly certified as a class action except for  
22 settlement purposes only.

23 29. Paragraph 29 states legal conclusions to which no response is required. To  
24 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 29 and  
25 further denies that it is liable or that this action is properly certified as a class action except  
26 for settlement purposes only.

27 30. Paragraph 30 states legal conclusions to which no response is required. To  
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1 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 30 and  
2 further denies that it is liable or that this action is properly certified as a class action except  
3 for settlement purposes only.

4 31. Paragraph 31 states legal conclusions to which no response is required. To  
5 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 31 and  
6 further denies that it is liable or that this action is properly certified as a class action except  
7 for settlement purposes only.

8 32. Paragraph 32 states legal conclusions to which no response is required. To  
9 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 32 and  
10 further denies that it is liable or that this action is properly certified as a class action except  
11 for settlement purposes only.

12 33. Paragraph 33 states legal conclusions to which no response is required. To  
13 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 33 and  
14 further denies that it is liable or that this action is properly certified as a class action except  
15 for settlement purposes only.

16 34. Paragraph 34 states legal conclusions to which no response is required. To  
17 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 34 and  
18 further denies that it is liable or that this action is properly certified as a class action except  
19 for settlement purposes only.

20 35. Paragraph 35 states legal conclusions to which no response is required. To  
21 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 35 and  
22 further denies that it is liable or that this action is properly certified as a class action except  
23 for settlement purposes only.

24 36. Paragraph 36 states legal conclusions to which no response is required. To  
25 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 36 and  
26 further denies that it is liable or that this action is properly certified as a class action except  
27 for settlement purposes only.  
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1           37. Paragraph 37 states legal conclusions to which no response is required. To  
2 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 37 and  
3 further denies that it is liable or that this action is properly certified as a class action except  
4 for settlement purposes only.

5           38. Paragraph 38 states legal conclusions to which no response is required. To  
6 the extent a response is deemed necessary, Cox is without information sufficient to admit  
7 or deny the allegations of Paragraph 38 and therefore denies the same.

8           39. Paragraph 39 states legal conclusions to which no response is required. To  
9 the extent a response is deemed necessary, Cox is without information sufficient to admit  
10 or deny the allegations of Paragraph 39 and therefore denies the same.

11           40. Paragraph 40 states legal conclusions to which no response is required. To  
12 the extent a response is deemed necessary, Cox is without information sufficient to admit  
13 or deny the allegations of Paragraph 40 and therefore denies the same.

14           41. Paragraph 41 states legal conclusions to which no response is required. To  
15 the extent a response is deemed necessary, Cox is without information sufficient to admit  
16 or deny the allegations of Paragraph 41 and therefore denies the same.

17           42. Paragraph 42 alleges legal conclusions to which no response is required. To  
18 the extent a response is deemed necessary, Cox is without information sufficient to admit  
19 or deny the allegations of Paragraph 42 and therefore denies the same.

20           43. Paragraph 43 states legal conclusions to which no response is required. To  
21 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 43 and  
22 further denies that it is liable or that this action is properly certified as a class action except  
23 for settlement purposes only.

24           44. Paragraph 44 states legal conclusions to which no response is required. To  
25 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 44 and  
26 further denies that it is liable or that this action is properly certified as a class action except  
27 for settlement purposes only.  
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1           45. Paragraph 45 states legal conclusions to which no response is required. To  
2 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 45 and  
3 further denies that it is liable or that this action is properly certified as a class action except  
4 for settlement purposes only.

5           46. Paragraph 46 states legal conclusions to which no response is required. To  
6 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 46 and  
7 further denies that it is liable or that this action is properly certified as a class action except  
8 for settlement purposes only.

9           47. Paragraph 47 states legal conclusions to which no response is required. To  
10 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 47 and  
11 further denies that it is liable or that this action is properly certified as a class action except  
12 for settlement purposes only.

13           48. Paragraph 48 states legal conclusions to which no response is required. To  
14 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 48 and  
15 further denies that it is liable or that this action is properly certified as a class action except  
16 for settlement purposes only.

17           49. Paragraph 49 states legal conclusions to which no response is required. To  
18 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 49 and  
19 further denies that it is liable or that this action is properly certified as a class action except  
20 for settlement purposes only.

21           50. Paragraph 50 states legal conclusions to which no response is required. To  
22 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 50 and  
23 further denies that it is liable or that this action is properly certified as a class action except  
24 for settlement purposes only.

25           51. Paragraph 51 states legal conclusions to which no response is required. To  
26 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 51 and  
27 further denies that it is liable or that this action is properly certified as a class action except  
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1 for settlement purposes only.

2 52. Paragraph 52 states legal conclusions to which no response is required. To  
3 the extent a response is deemed necessary, Cox denies the allegations of Paragraph 52 and  
4 further denies that it is liable or that this action is properly certified as a class action except  
5 for settlement purposes only.

6 **Count I**

7 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

8 53. Cox incorporates herein by reference its responses and denials to Paragraphs  
9 1 through 52 as if fully restated herein.

10 54. Cox denies the allegations of Paragraph 54.

11 55. Cox denies the allegations of Paragraph 55.

12 **Trial by Jury**

13 56. Paragraph 56 states legal conclusions to which no response is required. To  
14 the extent a response is deemed necessary, Cox admits the allegations of Paragraph 56.

15 **RESPONDING TO PRAYER FOR RELIEF**

16 Responding to Plaintiff's prayer for relief, Cox denies that Plaintiff is entitled to any  
17 relief, including treble damages, sought in the "WHEREFORE" Paragraph and denies all  
18 remaining allegations in this Paragraph.

19 **ANSWERING ALL ALLEGATIONS**

20 Cox denies any allegations contained in the headings used in the First Amended  
21 Complaint. To the extent that any heading in the First Amended Complaint is repeated in  
22 this Answer, it is for ease of reference only and should not be construed as an admission to  
23 the truth of any matter stated in the heading. Cox denies each and every allegation of the  
24 First Amended Complaint, whether express or implied, that is not specifically and  
25 unequivocally admitted herein. Except as expressly admitted or otherwise expressly stated  
26 above, Cox denies all allegations of Plaintiff's First Amended Complaint and denies that  
27 Plaintiff is entitled to any relief from Cox.

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**AFFIRMATIVE AND OTHER DEFENSES**

Each of the defenses set forth herein is stated as a separate and distinct defense, in the alternative to, and without waiving, any of the other defenses that are herein or which may hereafter be pleaded. Cox asserts the following specific defenses:

**FIRST DEFENSE**

Plaintiff’s First Amended Complaint, and each and every cause of action alleged therein, fails to state facts sufficient to constitute a cause of action against Cox or upon which relief may be granted.

**SECOND DEFENSE**

Plaintiff’s claims, as well as those of the class members, are barred in whole or part for lack of Article III standing. *See Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016).

**THIRD DEFENSE**

Plaintiff’s claims are barred, in whole or in part, because Plaintiff has sustained no damages. Neither Plaintiff nor any class member has sustained any actual injury as a result of the alleged violation of the TCPA.

**FOURTH DEFENSE**

Plaintiff’s claims are barred, in whole or in part, because Plaintiff’s requested relief is too speculative and/or remote and/or impossible to prove and/or allocate.

**FIFTH DEFENSE**

Plaintiff has failed to state a claim under the TCPA because Cox denies that any call attempted is actually a call “made” within the meaning of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

**SIXTH DEFENSE**

To the extent any calls were made, such calls were not made using an “automatic telephone dialing system” in violation of the TCPA.

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**SEVENTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, because Cox received prior express consent for the reassigned number belonging to Plaintiff. Cox reasonably relied on its customers' prior express consent in making debt collection phone calls to phone numbers associated with residential accounts.

**EIGHTH DEFENSE**

Cox acted in good faith in any and all interactions with Plaintiff and did not directly or indirectly perform any acts whatsoever which would constitute a violation of any rights of Plaintiff or any duty, if any, owed to Plaintiff.

**NINTH DEFENSE**

Plaintiff's claims against Cox are barred, in whole or in part, because Plaintiff's alleged injuries were caused by acts or omissions of Plaintiff.

**TENTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands and/or laches. Specifically, Plaintiff did not notify Cox that it had placed a call to a reassigned number formerly belonging to a Cox customer.

**ELEVENTH DEFENSE**

Plaintiff's claims for actual damages, if any, are barred in whole or in part as a result of her failure to mitigate her alleged damages, if any, and any recovery should be reduced in proportion to Plaintiff's failure to mitigate such damages.

**TWELFTH DEFENSE**

Plaintiff's claims are barred, in whole or in part, because reasonable practices and procedures have been established and implemented, with due care, to prevent violations of the TCPA.

**THIRTEENTH DEFENSE**

1  
2 Plaintiff's claim is barred because the conduct of Cox is and was privileged or  
3 justified, and Cox acted without any malice. Cox's lawful interest in contacting its  
4 customers—either for debt collection, informational purposes, or other account servicing  
5 activity—is necessary, and Cox reasonably believes such calls are necessary, to protect  
6 Cox's pecuniary interest in chattel and accounts, and its customers' interests. Moreover,  
7 the purported harm inflicted to Plaintiff in allegedly receiving the calls is not unreasonable  
8 as compared with the harm threatened to Cox's interests and chattel if it is barred from  
9 placing such calls. Hence, Cox's conduct is privileged and inactionable.

**FOURTEENTH DEFENSE**

10  
11 Application of the TCPA, as interpreted by the FCC, violates the First Amendment  
12 to the United States Constitution because such application relies upon content-based  
13 restrictions of protected speech. *See Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015)  
14 (“Government regulation of speech is content-based if a law applies to particular speech  
15 because of the topic discussed or the idea or message expressed.”).

**FIFTEENTH DEFENSE**

16  
17 The TCPA violates the First Amendment to the United States Constitution because  
18 it is an unconstitutional regulation of free speech. *See Martin v. City of Struthers, Ohio*,  
19 319 U.S. 141 (1943).

**SIXTEENTH DEFENSE**

20  
21 Plaintiff is not the “called party” and has no standing to bring this lawsuit.

**SEVENTEENTH DEFENSE**

22  
23 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.  
24 Specifically, Plaintiff did not notify Cox that it had placed a call to a reassigned number  
25 formerly belonging to a Cox customer.  
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**EIGHTEENTH DEFENSE**

1  
2 The imposition of statutory damages under the TCPA would violate the due process  
3 provisions of the United States Constitution and/or the State Constitution.

**NINETEENTH DEFENSE**

4  
5 Cox did not knowingly or willfully violate the TCPA or any of its regulations. Cox  
6 was not made aware of or notified that Plaintiff did not consent to calls from Cox.

**TWENTIETH DEFENSE**

7  
8 The First Amended Complaint, in asserting a claim under the TCPA, violates the  
9 rights of Cox to protection from “excessive fines” as provided in the Eighth Amendment  
10 to the United States Constitution. Statutory penalties violate due process rights “where the  
11 penalty prescribed is so severe and oppressive as to be wholly disproportioned to the  
12 offence and obviously unreasonable.” *United States v. Citrin*, 972 F.2d 1044, 1051 (9th  
13 Cir. 1992) (quoting *St Louis, I.M. & S. Ry. Co. v. Williams*, 251 U.S. 63, 66-67 (1919)).  
14 The alleged violation at issue—“making” a call to a cell phone that may or may not have  
15 been connected, received, or answered—causes *de minimis* or no actual harm. Imposition  
16 of a \$500.00 per call penalty is plainly excessive in this context and, taken in the aggregate,  
17 may result in potential damages that are not proportional to the conduct alleged.

**TWENTY-FIRST DEFENSE**

18  
19 The First Amended Complaint, to the extent that it seeks punitive or exemplary  
20 damages under the TCPA, violates the rights of Cox under the Due Process provisions of  
21 the United States Constitution. Specifically, grossly excessive penalties entered on a  
22 discretionary basis may amount to an “arbitrary deprivation of property without due  
23 process of law.” *E.g., TXO Production Corp. v. Alliance Resources Corp.*, 509 U.S. 443,  
24 453, 454 (1993); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562 (1996). The TCPA  
25 affords discretion to award up to \$1,500.00 “per violation.” Yet, the alleged violation at  
26 issue—“making” a call to a cell phone that may or may not have been connected, received  
27  
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1 or answered—causes *de minimis* or no actual harm. Hence, imposition of the discretionary  
2 punitive damage element built into the TCPA would violate the *BMW* proportionality test.

3 **TWENTY-SECOND DEFENSE**

4 This action, in whole or in part, is not maintainable as a proper class action because  
5 the proposed class does not satisfy the requirements for class certification under Federal  
6 Rule of Civil Procedure 23, including, but not limited to, class definition, ascertainability,  
7 numerosity, commonality, typicality, adequacy of representation, superiority, and  
8 manageability. The damages sought by the Plaintiff on behalf of the class cannot be  
9 recovered without specific proof by each purported class member that he or she has been  
10 injured.

11 **TWENTY-THIRD DEFENSE**

12 The allegations of the First Amended Complaint, and each purported cause of action  
13 alleged in the First Amended Complaint, are not pleaded with sufficient particularity, are  
14 uncertain, vague, ambiguous and unintelligible, and fail to meet the applicable pleading  
15 requirements.

16 **JURY TRIAL DEMAND**

17 Cox requests a trial by jury.

18 WHEREFORE, Cox prays for judgment as follows:

- 19 a) That Plaintiff take nothing by virtue of its First Amended Complaint;  
20 b) That Plaintiff's First Amended Complaint be dismissed in its entirety with  
21 prejudice;  
22 c) Trial by jury on all matters;  
23 d) That Cox be granted its reasonable attorney's fees, costs and expenses; and  
24 e) That the Court award such other and further relief as it deems just and  
25 proper.

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Dated: July 3, 2019

Respectfully submitted,

By: /s/ Petrina A. McDaniel

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*Attorneys for Defendant Cox  
Communications, Inc.*

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**CERTIFICATE OF SERVICE**

This is to certify that on July 3, 2019, a copy of the foregoing was filed electronically with the above-captioned court, with notice of the filing being generated and sent electronically by the Court’s CM/ECF system to all counsel of record.

By: /s/ Petrina A. McDaniel  
Petrina A. McDaniel