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[additional Defendant's counsel on signatory line]

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

John McCurley, Individually and  
and on Behalf of All Others Similarly  
Situating,

Plaintiff,

v.

Royal Seas Cruises, Inc.,

Defendant.

Case No.: 3:17-cv-01988-AJB-AGS

*consolidated with*

Case No.: 3:17-cv-00986-BAS-AGS

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Dan DeForest, Individually and  
and on Behalf of All Others Similarly  
Situating,

Plaintiff,

v.

Royal Seas Cruises, Inc.,

Defendant.

**DEFENDANT ROYAL SEAS  
CRUISES, INC.'S FIRST AMENDED  
ANSWER, DEFENSES, AND  
AFFIRMATIVE DEFENSES TO  
CONSOLIDATED COMPLAINT**

1 Defendant, ROYAL SEAS CRUISES, INC. (“RSC”), files its Answer,  
2 Defenses, and Affirmative Defenses to the Consolidated Complaint for Damages  
3 and Injunctive Relief (DE 31) ) (“Complaint”) of Plaintiffs JOHN MCCURLEY  
4 (“McCurley”) and DAN DEFOREST (“DeForest”) (collectively, “Plaintiffs”), as  
5 follows:  
6

## 7 INTRODUCTION

8  
9 1. RSC admits only that Plaintiffs purport to assert individual claims and  
10 claims of a putative class for alleged violations of the Telephone Consumer  
11 Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), but denies such claims are valid  
12 or any class exists and otherwise denies the allegations in Paragraph 1 of the  
13 Complaint.  
14

15  
16 2. RSC admits only that DeForest purports to assert individual claims and  
17 claims of a putative class for alleged violations of the California Invasion of  
18 Privacy Act, Cal. Penal Code § 632.7 (“CIPA”), but denies such claims are valid or  
19 any class exists and otherwise denies the allegations in Paragraph 2 of the  
20 Complaint.  
21

22  
23 3. RSC is without knowledge as to the scope of the Plaintiffs’ personal  
24 knowledge or information and belief underlying their allegations and otherwise  
25 denies the allegations in Paragraph 3 of the Complaint.  
26  
27  
28

1                   **THE TELEPHONE CONSUMER PROTECTION ACT**

2           4.       Paragraph 4 of the Complaint contains only legal conclusions and RSC  
3  
4 respectfully refers to the entirety of the TCPA, its full legislative history, agency  
5 interpretations, and case law for its full and proper interpretation and effect, and  
6 otherwise denies any allegations in Paragraph 4 of the Complaint.  
7

8           5.       Paragraph 5 of the Complaint contains only legal conclusions and RSC  
9 respectfully refers to the entirety of the TCPA, its full legislative history, agency  
10 interpretations, and case law for its full and proper interpretation and effect, and  
11 otherwise denies any allegations in Paragraph 5 of the Complaint.  
12

13          6.       Paragraph 6 of the Complaint contains only legal conclusions and RSC  
14 respectfully refers to the entirety of the TCPA, its full legislative history, agency  
15 interpretations, and case law for its full and proper interpretation and effect, and  
16 otherwise denies any allegations in Paragraph 6 of the Complaint.  
17

18          7.       Paragraph 7 of the Complaint contains only legal conclusions and RSC  
19 respectfully refers to the entirety of the TCPA, its full legislative history, agency  
20 interpretations, and case law for its full and proper interpretation and effect, and  
21 otherwise denies any allegations in Paragraph 7 of the Complaint.  
22  
23

24                   **CALIFORNIA'S INVASION OF PRIVACY ACT**

25          8.       Paragraph 8 of the Complaint contains only legal conclusions and RSC  
26 respectfully refers to the entirety of CIPA, its full legislative history, agency  
27  
28

1 interpretations, and case law for its full and proper interpretation and effect, and  
2 otherwise denies any allegations in Paragraph 8 of the Complaint.

3  
4 9. Paragraph 9 of the Complaint contains only legal conclusions and RSC  
5 respectfully refers to the entirety of CIPA, its full legislative history, agency  
6 interpretations, and case law for its full and proper interpretation and effect, and  
7 otherwise denies any allegations in Paragraph 9 of the Complaint.

8  
9 10. Paragraph 10 of the Complaint contains only legal conclusions and  
10 RSC respectfully refers to the entirety of CIPA, its full legislative history, agency  
11 interpretations, and case law for its full and proper interpretation and effect, and  
12 otherwise denies any allegations in Paragraph 10 of the Complaint.

13  
14 11. RSC denies the allegations in Paragraph 11 of the Complaint.

15  
16 **JURISDICTION AND VENUE**

17 12. RSC admits only this Court has subject matter jurisdiction over  
18 Plaintiffs' individual claims and otherwise denies the Plaintiffs' allegations of  
19 violations of the TCPA.

20  
21 13. RSC admits only this Court has supplemental jurisdiction over  
22 DeForest's state law claim and otherwise denies DeForest's allegations of  
23 violations of state law.

24  
25 14. RSC denies the existence of a class as described and otherwise denies  
26 the allegations in Paragraph 14 of the Complaint.  
27  
28

15. RSC denies the existence of a class as described and otherwise denies the allegations in Paragraph 15 of the Complaint.

16. RSC denies the allegations in Paragraph 16 of the Complaint.

17. RSC is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiffs' residency and otherwise denies the allegations in Paragraph 17 of the Complaint.

**PARTIES**

18. RSC is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 of the Complaint.

19. RSC is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 of the Complaint

20. RSC admits only that it is a Florida corporation and otherwise denies the allegations in Paragraph 20 of the Complaint and refers to the cited statute and interpretations thereof for its proper interpretation and effect.

21. RSC admits that it is a Florida corporation with office in Fort Lauderdale, Florida.

22. RSC without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Complaint.

## FACTUAL ALLEGATIONS RE: MCCURLEY

23. RSC refers to the cited statute and interpretations thereof for its proper interpretation and effect, and is otherwise without knowledge or information

1 sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the  
2 Complaint.

3  
4 24. RSC refers to the cited statute and interpretations thereof for its proper  
5 interpretation and effect, and is otherwise without knowledge or information  
6 sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the  
7 Complaint.  
8

9 25. RSC admits only that it is a Florida corporation and refers to the cited  
10 statute and interpretations thereof for its proper interpretation and effect.  
11

12 26. RSC is without knowledge or information sufficient to form a belief as  
13 to the truth of the allegations in Paragraph 26 of the Complaint.

14 27. RSC denies the allegations in Paragraph 27 of the Complaint.  
15

16 28. RSC denies that it made a call to McCurley, and is without knowledge  
17 or information sufficient to form a belief as to the truth of the remaining allegations  
18 in Paragraph 28 of the Complaint.  
19

20 29. RSC denies that it made a call to McCurley, and is without knowledge  
21 or information sufficient to form a belief as to the truth of the allegations in  
22 Paragraph 29 of the Complaint.  
23

24 30. RSC is without knowledge or information sufficient to form a belief as  
25 to the truth of the allegations in Paragraph 30 of the Complaint.  
26  
27  
28

1           31. RSC denies that it made any calls to McCurley, and is without  
2 knowledge or information sufficient to form a belief as to the truth of the  
3 allegations in Paragraph 31 of the Complaint.  
4

5           32. RSC denies that it made a call to McCurley, and is without knowledge  
6 or information sufficient to form a belief as to the truth of the allegations in  
7 Paragraph 32 of the Complaint.  
8

9           33. RSC denies that it made a call to McCurley, and is without knowledge  
10 or information sufficient to form a belief as to the truth of the allegations in  
11 Paragraph 33 of the Complaint.  
12

13           34. RSC denies that it made a call to McCurley, and is without knowledge  
14 or information sufficient to form a belief as to the truth of the allegations in  
15 Paragraph 34 of the Complaint.  
16

17           35. RSC denies that it made a call to McCurley, and is without knowledge  
18 or information sufficient to form a belief as to the truth of the allegations in  
19 Paragraph 35 of the Complaint.  
20

21           36. RSC denies that it made a call to McCurley, and is without knowledge  
22 or information sufficient to form a belief as to the truth of the allegations in  
23 Paragraph 36 of the Complaint.  
24

25           37. RSC denies the allegations in Paragraph 37 of the Complaint.

26           38. RSC denies the allegations in Paragraph 38 of the Complaint.  
27  
28

1           39. RSC denies that it made a call to McCurley, and is without knowledge  
2 or information sufficient to form a belief as to the truth of the allegations in  
3 Paragraph 39 of the Complaint.  
4

5           40. RSC denies that it made a call to McCurley, and is without knowledge  
6 or information sufficient to form a belief as to the truth of the allegations in  
7 Paragraph 40 of the Complaint.  
8

9           41. RSC denies that it made a call to McCurley, and is without knowledge  
10 or information sufficient to form a belief as to the truth of the allegations in  
11 Paragraph 41 of the Complaint.  
12

13           42. RSC denies that it made a call to McCurley, and is without knowledge  
14 or information sufficient to form a belief as to the truth of the allegations in  
15 Paragraph 42 of the Complaint.  
16

17           43. RSC denies that it made a call to McCurley, and is without knowledge  
18 or information sufficient to form a belief as to the truth of the allegations in  
19 Paragraph 43 of the Complaint.  
20

21           44. RSC denies that it made a call to McCurley, and is without knowledge  
22 or information sufficient to form a belief as to the truth of the allegations in  
23 Paragraph 44 of the Complaint.  
24

25           45. RSC denies that it made a call to McCurley, and is without knowledge  
26 or information sufficient to form a belief as to the truth of the allegations in  
27 Paragraph 45 of the Complaint.  
28



1           46. RSC denies that it made a call to McCurley, and is without knowledge  
2 or information sufficient to form a belief as to the truth of the allegations in  
3 Paragraph 46 of the Complaint.  
4

5           47. RSC denies that it made a call to McCurley, and is without knowledge  
6 or information sufficient to form a belief as to the truth of the allegations in  
7 Paragraph 47 of the Complaint.  
8

9           48. RSC denies that it made a call to McCurley, and is without knowledge  
10 or information sufficient to form a belief as to the truth of the allegations in  
11 Paragraph 48 of the Complaint.  
12

13           49. RSC admits it has no records reflecting a business relationship with  
14 McCurley.  
15

16           50. RSC denies all allegations in paragraph 50 of the Complaint.

17           51. RSC denies all allegations in paragraph 51 of the Complaint.

18           52. RSC is without knowledge or information sufficient to form a belief as  
19 to terms of McCurley's cellular telephone service, and otherwise denies the  
20 allegations in Paragraph 52 of the Complaint.  
21

22           53. RSC denies the allegations in Paragraph 53 of the Complaint.  
23

24           54. RSC admits it has no records reflecting that McCurley was one of its  
25 customers and is without knowledge or information sufficient to form a belief as to  
26 the truth of the allegation that McCurley did not provide his cellular telephone  
27 number to RSC.  
28

1           55. RSC admits it has no established business relationship with McCurley,  
2 but RSC refers to the cited statute and interpretations thereof for its proper  
3 interpretation and effect of the term “an established business relationship.”  
4

5           56. RSC denies the allegations in paragraph 56 of the Complaint.  
6

7                           **FACTUAL ALLEGATIONS RE: DEFOREST**

8           57. RSC denies the allegations in Paragraph 57 of the Complaint.

9           58. RSC admits that it contracted with Prospects DM, Inc., which conducts  
10 some of its business through the trade name Helping Hands Association, to call  
11 persons with consent generated by third-party web companies and to transfer calls  
12 to RSC of persons who express an interest in RSC’s services. RSC otherwise  
13 denies the allegations in Paragraph 58 of the Complaint.  
14

15           59. RSC denies the allegations in Paragraph 59 of the Complaint.  
16

17           60. RSC denies the allegations in Paragraph 60 of the Complaint.  
18

19           61. RSC denies the allegations in Paragraph 61 of the Complaint.

20           62. RSC denies making any calls to the DeForest and denies the  
21 allegations in Paragraph 62 of the Complaint.  
22

23           63. RSC denies making any calls to the DeForest and denies the  
24 allegations in paragraph 63 of the Complaint.

25           64. RSC denies making any calls to DeForest, emergency or otherwise,  
26 and denies the allegations in paragraph 64 of the Complaint.  
27  
28

1           65. RSC denies making any calls to DeForest and denies the allegations in  
2 paragraph 65 of the Complaint.

3  
4           66. RSC denies making any calls to DeForest and otherwise denies the  
5 allegations in paragraph 66 of the Complaint.

6           67. RSC denies the allegations in paragraph 67 of the Complaint.

7  
8           68. RSC denies the allegations in paragraph 68 of the Complaint.

9           69. RSC denies making any calls to the DeForest and denies the  
10 allegations in paragraph 69 of the Complaint.

11  
12           70. RSC denies making any calls to DeForest, for solicitation or otherwise,  
13 refers to the cited regulation and interpretations thereof for its proper interpretation  
14 and effect, and otherwise denies the allegations in paragraph 70 of the Complaint.

15  
16           71. RSC denies making any calls to the DeForest and denies the  
17 allegations in paragraph 71 of the Complaint.

18           72. RSC denies making any calls to the DeForest and denies the  
19 allegations in paragraph 72 of the Complaint.

20  
21           73. RSC denies making any calls to the DeForest and denies the  
22 allegations in paragraph 73 of the Complaint.

23  
24           74. RSC denies making any calls to the DeForest and denies the  
25 allegations in paragraph 74 of the Complaint.

26           75. RSC denies making any calls to the DeForest and denies the  
27 allegations in paragraph 75 of the Complaint.

**CLASS ACTION ALLEGATIONS**

76. RSC admits that Plaintiffs purport to assert individual claims and claims on behalf of a putative class, but denies that such claims are valid or any class does or could exist.

77. RSC admits only that Plaintiffs have proposed a definition for a putative class of persons, but RSC denies that any such class of persons exists or that Plaintiffs are members of any class of similarly situated persons, as described or otherwise, with respect to the events alleged in the Complaint, and further denies the truth of all other allegations in Paragraph 77 of the Complaint.

78. RSC admits only that DeForest has proposed a definition for a putative class of persons, but RSC denies that any such class of persons exists or that DeForest is a member of any class of similarly situated persons, as described or otherwise, with respect to the events alleged in the Complaint, and further denies the truth of all other allegations in Paragraph 78 of the Complaint.

79. RSC denies the existence of “The Classes” as defined by Plaintiffs in Paragraph 79 of the Complaint.

80. RSC admits only that Plaintiffs have no knowledge as to the existence of any members of The Classes, and that if The Classes existed (which they do not), RSC, its employees, and agents would be excluded from membership. RSC denies all other allegations in Paragraph 80 of the Complaint.

81. RSC denies all allegations in Paragraph 81 of the Complaint.

1           82. RSC denies all allegations in Paragraph 82 of the Complaint.

2           83. RSC is without knowledge as to the intentions of the Plaintiffs in  
3  
4 bringing this action, denies Plaintiffs have any basis for seeking damages or  
5 injunctive relief, and otherwise deny the allegations in Paragraph 83 of the  
6 Complaint.

7  
8           84. RSC denies all allegations in Paragraph 84 of the Complaint.

9           85. RSC denies all allegations in Paragraph 85 of the Complaint.

10          86. RSC denies all allegations in Paragraph 86 of the Complaint.

11          87. RSC denies all allegations in Paragraph 87 of the Complaint.

12          88. RSC denies all allegations in Paragraph 88 of the Complaint.

13          89. RSC denies all allegations in Paragraph 89 of the Complaint.

14          90. RSC denies all allegations in Paragraph 90 of the Complaint.

15          91. RSC is without knowledge as to the experience of the counsel retained  
16  
17 by Plaintiffs.

18  
19          92. RSC denies all allegations in Paragraph 92 of the Complaint.

20          93. RSC denies all allegations in Paragraph 93 of the Complaint.

21  
22  
23                   **FIRST CAUSE OF ACTION**  
24                   **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER**  
25                   **PROTECTION ACT 47 U.S.C. §227 ET SEQ.**

26          94. RSC incorporates and realleges its responses to Paragraphs 1 through  
27 93 as if fully set forth herein.

28          95. RSC denies all allegations in Paragraph 95 of the Complaint.

1           96. RSC denies that any such class of persons exists, and otherwise denies  
2 all allegations in Paragraph 96 of the Complaint.

3  
4           97. RSC denies that any such class of persons exists, and otherwise denies  
5 all allegations in Paragraph 97 of the Complaint.

6  
7                           **SECOND CAUSE OF ACTION**  
8           **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE**  
9           **CONSUMER PROTECTION ACT 47 U.S.C. §227 ET SEQ.**

10           98. RSC incorporates and realleges its responses to Paragraphs 1 through  
11 93 as if fully set forth herein.

12           99. RSC denies all allegations in Paragraph 99 of the Complaint.

13           100. RSC denies that any such class of persons exists, and otherwise denies  
14 all allegations in Paragraph 100 of the Complaint.

15  
16           101. RSC denies that any such class of persons exists, and otherwise denies  
17 all allegations in Paragraph 101 of the Complaint.

18  
19                           **THIRD CAUSE OF ACTION**  
20           **VIOLATION OF THE CALIFORNIA INVASION OF PRIVACY ACT**  
21           **CAL. PENAL CODE §632.7**

22           102. RSC incorporates and realleges its responses to Paragraphs 1 through  
23 93 as if fully set forth herein.

24           103. Paragraph 103 of the Complaint contains only generalized legal  
25 conclusions and RSC refers to the entirety of the CIPA, its legislative history,  
26  
27  
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1 agency interpretations thereof, and any case law for its proper interpretation and  
2 effect, and otherwise denies any allegations in Paragraph 103 of the Complaint.  
3

4 104. Paragraph 104 of the Complaint contains only generalized legal  
5 conclusions and RSC refers to the entirety of the CIPA, its legislative history,  
6 agency interpretations thereof, and any case law for its proper interpretation and  
7 effect, and otherwise denies any allegations in Paragraph 104 of the Complaint.  
8

9 105. Paragraph 105 of the Complaint contains only generalized legal  
10 conclusions and RSC refers to the entirety of the CIPA, its legislative history,  
11 agency interpretations thereof, and any case law for its proper interpretation and  
12 effect, and otherwise denies the allegations in Paragraph 105 of the Complaint.  
13

14 106. Paragraph 106 of the Complaint contains only generalized legal  
15 conclusions and RSC refers to the entirety of the CIPA, its legislative history,  
16 agency interpretations thereof, and any case law for its proper interpretation and  
17 effect, and otherwise denies the allegations in Paragraph 106 of the Complaint.  
18

19  
20 107. RSC denies all allegations in Paragraph 107 of the Complaint.

21 108. RSC denies all allegations in Paragraph 108 of the Complaint.  
22

23 109. RSC denies that any such class of persons exists, and otherwise denies  
24 all allegations in Paragraph 109 of the Complaint.

25 110. RSC denies that any such class of persons exists, and otherwise denies  
26 all allegations in Paragraph 110 of the Complaint.  
27  
28

111. RSC denies that any such class of persons exists, and otherwise denies all allegations in Paragraph 111 of the Complaint.

**PRAYER FOR RELIEF**

112. RSC denies that Plaintiffs or any putative class of persons are entitled to the relief being sought for any of the causes of actions alleged in the Complaint.

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATIONS OF THE TCPA, 47 U.S.C. §227 ET SEQ.**

113. RSC denies all allegations and requests for relief in Paragraph 113 of the Complaint.

114. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 114 of the Complaint.

115. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 114 of the Complaint.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. §227 ET SEQ.**

116. RSC denies all allegations and requests for relief in Paragraph 116 of the Complaint.

117. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 117 of the Complaint.

118. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 118 of the Complaint.

**THIRD CAUSE OF ACTION FOR VIOLATION OF THE CALIFORNIA'S**



**INVASION OF PRIVACY ACT, CAL. PENAL CODE §632.7**

119. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 119 of the Complaint.

120. RSC denies all allegations and requests for relief in Paragraph 120 of the Complaint.

121. RSC denies all allegations and requests for relief in Paragraph 121 of the Complaint.

122. RSC denies that Plaintiffs are entitled to any of the relief requested in Paragraph 122 of the Complaint.

**TRIAL BY JURY**

123. RSC admits that Plaintiffs demand a trial by jury but denies that any classes of persons exist holding alleged claims similar to Plaintiffs and thus a jury trial is wholly inappropriate and disproportionate for their claims, which could be efficiently be resolved in small claims court without an attorney.

**DEFENSES AND AFFIRMATIVE DEFENSES**

RSC states that it intends to rely upon and otherwise preserve the following Defenses and Affirmative Defenses to Plaintiffs' Complaint:

**FIRST AFFIRMATIVE DEFENSE**

124. Plaintiffs' Complaint fails to state a plausible claim upon which relief can be granted because the factual allegations are incomplete and/or do not state a claim for relief under the TCPA or CIPA against RSC. Plaintiffs have failed to allege what party made the purported telephone calls, including whether or not Plaintiffs are basing liability upon a special relationship between RSC and the actual entity or entities that allegedly called Plaintiff, thereby giving rise to some theory of third-party liability by RSC for the alleged telephone calls.<sup>1</sup> Additionally, Plaintiffs have failed to allege any plausible facts to establish that RSC intentionally recorded telephone conversations of persons without their knowledge or consent. Therefore, these allegations are not enough to raise a right to relief above the speculative level.<sup>2</sup>

**SECOND AFFIRMATIVE DEFENSE**

125. Plaintiffs have failed to state a plausible cause of action for class relief pursuant to Federal Rule of Civil Procedure 23, in that, *inter alia*, the claims Plaintiffs assert cannot be common or typical of the claims of the putative class. Nor is class relief superior to other available methods for fairly and efficiently adjudicating the claims Plaintiffs assert, which do not warrant class treatment.

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<sup>1</sup> See *Schaffer v. A.O. Smith Harvestore Prods., Inc.*, 74 F.3d 722, 731 (6th Cir. 1996) (approving the district court's finding that separate entities are "entitled to be treated as such" and granting summary judgment for defendant upon plaintiff's failure to allege a theory of vicarious liability linking defendant to the acts alleged in the complaint).

<sup>2</sup> *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955, 1964-65, 167 L.Ed.2d 929 (2007).

1 Further, the proposed classes is overly broad, “fail-safe,” and otherwise  
 2 unascertainable.

### 3 **THIRD AFFIRMATIVE DEFENSE**

4  
 5 126. Plaintiffs’ claims under the TCPA are barred because Plaintiffs and  
 6 putative class members gave their prior express consent to be called on their  
 7 cellular telephones, and such consent was never validly revoked. Plaintiffs and  
 8 putative class members’ consent was obtained by third parties operating the  
 9 websites diabeteshealth.info and yourautohealthlifeinsurance.com through opt-in  
 10 consent forms on those websites and written consent was provided to Prospects  
 11 DM, Inc. prior to the calls at issue in this case being placed to Plaintiffs and  
 12 putative class members.  
 13  
 14

### 15 **FOURTH AFFIRMATIVE DEFENSE**

16  
 17 127. DeForest’s claim under the CIPA is barred because DeForest  
 18 consented to, and/or had knowledge of, the recording of calls on his cellular  
 19 telephone as described in his Complaint, and such consent was never validly  
 20 revoked.  
 21

### 22 **FIFTH AFFIRMATIVE DEFENSE**

23  
 24 128. RSC states that to the extent it engaged in any conduct which may  
 25 have violated any provision of the TCPA or the CIPA, such violation was  
 26 unintentional, accidental, and as a result of a *bona fide* error which occurred  
 27 notwithstanding the maintenance of procedures reasonably adapted to avoid such  
 28

1 error and ensure RSC's compliance with all applicable statutory, regulatory, and  
2 common law requirements. Additionally, RSC raises its good faith compliance as a  
3 defense to Plaintiff's claims for treble damages for alleged willing or knowing  
4 violations of the TCPA.  
5

6  
7 **SIXTH AFFIRMATIVE DEFENSE**

8 129. Plaintiffs and putative class members' damages, if any, and none being  
9 admitted, were not caused by RSC, but were caused by another person or entity,  
10 including Plaintiffs, putative class members, Prospects DM, Inc., and/or one or  
11 more of the dozens of web marketing companies that generated online consent  
12 leads that were sold to Prospects DM, Inc. RSC is not responsible for these parties  
13 and exercises no control and/or has no right to control their activities.  
14  
15

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 130. Plaintiffs' claims are barred by the doctrines of estoppel and unclean  
18 hands. Upon information and belief, Plaintiffs solicited and/or encouraged the  
19 alleged calls described in the Complaint, and knowingly consented to the recording  
20 of such calls, for the purpose of generating a lawsuit against RSC and alleging  
21 claims of a putative class as leverage to exact a settlement for their own personal  
22 benefit in an amount vastly exceeding any damages they could ever claim for their  
23 individual claims.  
24  
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**EIGHTH AFFIRMATIVE DEFENSE**

131. Plaintiffs' request for the imposition of statutory damages under the TCPA and the CIPA would be so punitive and disproportionate to the gravity of the violations alleged in the Complaint as to amount to a violation of the due process.

**NINTH AFFIRMATIVE DEFENSE**

132. Plaintiffs' TCPA claims are barred because RSC did not use an automatic telephone dialing system as defined under the TCPA and no automatic telephone dialing system was used to contact Plaintiffs.

**TENTH AFFIRMATIVE DEFENSE**

133. Plaintiffs' claims are barred to the extent the TCPA, facially and/or as applied in this case, violates RSC's right under the First Amendment to free speech.

**ELEVENTH AFFIRMATIVE DEFENSE**

134. RSC states that to the extent any provision of the TCPA or CIPA was violated as a result of a purported revocation of consent from Plaintiffs, Plaintiffs' damages, if any, would be limited to the number of purported calls or recordings which took place after Plaintiffs actually revoked their consent, which they do not allege ever occurred.<sup>3</sup>

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<sup>3</sup> *Hitchman v. National Enterprise Systems, Inc.*, No. 12-61043-Civ., 2014 WL 912363, \*3 (S.D. Fla. Mar. 10, 2014).

1                                    **TWELFTH AFFIRMATIVE DEFENSE**

2            135. RSC asserts that Plaintiffs' claims are barred because Plaintiffs  
3 directed, encouraged, consented to, ratified, or acquiesced to all of the alleged  
4 actions of RSC, and they are not entitled to any relief from RSC for  
5 communications they expressly requested and authorized and knowingly agreed  
6 would be recorded.  
7

8                                    **THIRTEENTH AFFIRMATIVE DEFENSE**

9            136. Plaintiffs lack standing to assert claims under the TCPA or the CIPA  
10 because they allege bare procedural statutory violations divorced from any actual,  
11 concrete injury-in-fact.  
12

13                                    **FOURTEENTH AFFIRMATIVE DEFENSE**

14            137. RSC asserts that Plaintiffs have not alleged any plausible facts to  
15 establish that RSC has acted intentionally, maliciously, willfully, knowingly,  
16 recklessly, negligently, or under a false pretense in any of its alleged conduct, and  
17 therefore Plaintiffs are barred from recovering treble damages under the TCPA.  
18

19                                    **FIFTEENTH AFFIRMATIVE DEFENSE**

20            138. Plaintiffs' claims are barred because the TCPA and CIPA, within the  
21 context of a class action, are violative of RSC's constitutional rights under the  
22 Eighth Amendment prohibition against excessive fines and cruel and unusual  
23 punishment.  
24

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 139. Maintenance of this action as a class action is inconsistent with the  
3  
4 legislative intent of the TCPA in that the United States Congress intended that  
5 claims under the TCPA proceed as individual actions. The TCPA's legislative  
6 history supports a conclusion that class actions were not intended, but rather that  
7 Congress envisioned the statute as providing a private right of action to consumers  
8 receiving the specifically prohibited communications, allowing them to pursue the  
9 statutory damages of \$500 in small claims court without an attorney. In holding that  
10 a class action could not proceed under the TCPA, one federal district court  
11 determined that "the statutory remedy is designed to provide adequate incentive for  
12 an individual plaintiff to bring suit on his own behalf..."<sup>4</sup> A class action would be  
13 inconsistent with the specific and personal remedy provided by Congress to address  
14 the minor nuisance of unsolicited facsimile advertisements.<sup>5</sup>

15 **SEVENTEENTH AFFIRMATIVE DEFENSE**

16 140. Plaintiffs' claims are barred for failure to join necessary and  
17 indispensable parties, including but not limited the person or entity Plaintiffs refer  
18 to as "Helping Hands."

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28 <sup>4</sup> *Forman v. Data Transfer, Inc.*, 164 F.R.D. 400, 404-05 (E.D. Penn. 1995).

<sup>5</sup> *Id.*

1                                   **EIGHTEENTH AFFIRMATIVE DEFENSE**

2           141. To the extent Plaintiffs premise liability upon a special relationship  
3 between RSC and the actual entity or entities that allegedly called Plaintiffs – which  
4 Plaintiffs have not alleged – Plaintiffs’ claims against RSC would be barred  
5 because no facts support any theory of vicarious liability against RSC for acts of  
6 third parties outside the scope of their actual or apparent authority and Plaintiffs  
7 have not conferred any benefit on RSC that could be deemed a ratification of  
8 alleged acts of third parties outside the scope of authority. Likewise, Plaintiffs  
9 cannot demonstrate a basis for imposing vicarious liability on RSC for the acts of  
10 third-party web marketing companies that generated online consent leads and sold  
11 them to Prospects DM, Inc., the entity that RSC contracted with to receive call  
12 transfers as part of an opt-in consent lead generation program.

13                                   **NINETEENTH AFFIRMATIVE DEFENSE**

14           142. DeForest’s claims under CIPA are barred because he has not suffered  
15 an injury as required to bring a private right of action under Cal. Penal Code §  
16 637.2(a).

17                                   **TWENTIETH AFFIRMATIVE DEFENSE**

18           143. DeForest’s claims under CIPA are barred because RSC adequately  
19 advises all parties to any telephone call that it records, at the outset of the call, of its  
20 intent to record the call, and the recording of telephone calls with such adequate  
21



disclosure does not violate CIPA. *Kearney v. Salomon Smith Barney, Inc.*, 39 Cal. 4th 95, 117-118 (Cal. 2006).

#### **TWENTY-FIRST AFFIRMATIVE DEFENSE**

144. DeForest's claims under CIPA are barred because CIPA has the effect of regulating out-of-state businesses in violation of the Commerce Clause of the United States Constitution.

#### **TWENTY-SECOND AFFIRMATIVE DEFENSE**

145. DeForest's request for attorney's fees for his CIPA claim must be barred because this action does not seek to enforce an important right affecting the public interest or otherwise satisfy the requirements of California's Private Attorney General Statute, Cal. Civ. Proc. Code § 1021.5.

#### **TWENTY-THIRD AFFIRMATIVE DEFENSE**

146. All claims of a putative class under CIPA have been waived by DeForest's failure to file a motion to certify a CIPA class by the court's extended deadline for seeking class certification.

WHEREFORE, having answered the Complaint and raised its defenses and affirmative defenses, Defendant Royal Seas Cruises, Inc. respectfully requests that this Court enter judgment against Plaintiffs and in favor of RSC, dismiss this action with prejudice, enter an Order decertifying the Class and Transfer Subclass award RSC its costs incurred in defending this action, and for such other relief this Court deems just and proper.

1 DATED: July 15, 2019.

2 Respectfully Submitted,

3  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was has been served electronically filed with the Clerk of Court by using CM/ECF service which will provide copies to all counsel of record set forth on the Service List below who are registered to receive CM/ECF notification as reflected on the Service List on this 15th day of July, 2019.

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