



## **II. JURISDICTION AND VENUE**

5. CWT admits the allegations contained in Paragraph 5 of the Complaint only to the extent that it alleges that this Court has federal question subject matter jurisdiction in actions alleging violations of the TCPA, but otherwise denies any remaining allegations in Paragraph 5 and denies that it has violated the TCPA or engaged in any other wrongdoing vis-à-vis the Plaintiffs and other putative class members that would give rise to a legal action.

6. CWT admits the allegations contained in Paragraph 6 of the Complaint only to the extent that it alleges that this Court has supplemental jurisdiction in actions alleging violations of the ATDA together with TCPA claims, but otherwise denies any remaining allegations in Paragraph 6 and denies that it has violated the ATDA or the TCPA, or engaged in any other wrongdoing vis-à-vis the Plaintiffs and other putative class members that would give rise to a legal action.

7. CWT admits the allegations contained in Paragraph 7 of the Complaint only to the extent that CWT admits this Court has personal jurisdiction over it. CWT denies the remaining allegations contained in Paragraph 7 of the Complaint.

8. CWT admits that Plaintiffs allege that venue is proper in this Court, but otherwise denies or is without knowledge as to the veracity of the allegations contained in Paragraph 8 of the Complaint, and therefore denies the same.

## **III. PARTIES**

9. CWT is without knowledge as to the veracity of the allegations in Paragraph 9 of the Complaint and therefore denies the same.

10. CWT is without knowledge as to the veracity of the allegations in Paragraph 10 of the Complaint and therefore denies the same.

11. CWT is without knowledge as to the veracity of the allegations in Paragraph 11 of the Complaint and therefore denies the same.

12. CWT is without knowledge as to the veracity of the allegations in Paragraph 12 of the Complaint and therefore denies the same.

13. CWT admits CWT is wholly owned by Consolidated Travel Holdings Group, Inc., and otherwise denies any remaining allegations contained in Paragraph 13 of the Complaint.

14. CWT admits the allegations contained in Paragraph 14 of the Complaint for jurisdictional purposes only, but otherwise denies the Plaintiffs are entitled to any relief in this action.

15. CWT admits the allegations contained in Paragraph 15 of the Complaint, but otherwise denies the Plaintiffs are entitled to any relief in this action.

16. CWT is without knowledge as to the veracity of the allegations in Paragraph 16 of the Complaint and therefore denies the same.

17. CWT denies the allegations contained in Paragraph 17 of the Complaint.

18. CWT denies the allegations contained in Paragraph 18 of the Complaint.

19. CWT denies the allegations contained in Paragraph 19 of the Complaint.

20. CWT, based upon information and belief, admits that Daniel Lambert is domiciled in Florida. CWT denies the remaining allegations contained in Paragraph 20 of the Complaint.

21. CWT admits Daniel Lambert has been the President of CWT since July 26, 2016. CWT denies the remaining allegations contained in Paragraph 21 of the Complaint relating to CWT. CWT is without knowledge as to the veracity of the remaining allegations contained in Paragraph 21 of the Complaint and therefore denies the same.

22. CWT denies the allegations contained in Paragraph 22 relating to CWT. CWT is without knowledge as to the veracity of the remaining allegations contained in Paragraph 22 of the Complaint and therefore denies the same.

23. CWT denies the allegations contained in Paragraph 23 of the Complaint.

24. CWT is without knowledge as to the veracity of the allegations in Paragraph 24 of the Complaint and therefore denies the same.

25. CWT denies the allegations contained in Paragraph 25 of the Complaint.

26. CWT denies the allegations contained in Paragraph 26 of the Complaint.

27. CWT denies the allegations contained in Paragraph 27 of the Complaint.

28. CWT, upon information and belief, denies the allegations contained in Paragraph 28 of the Complaint because Donna Higgins has been domiciled in South Carolina as of February 2016.

29. CWT denies the allegations contained in Paragraph 29 of the Complaint.

30. CWT denies the allegations contained in Paragraph 30 of the Complaint.

31. CWT denies the allegations contained in Paragraph 31 of the Complaint.

#### **IV. FACTUAL BACKGROUND**

32. CWT admits that the report cited in Footnote 1 to Paragraph 32 of the Complaint speaks for itself. The remaining allegations contained in Paragraph 32 of the Complaint constitute a legal conclusion to which a response is not required. Accordingly, CWT denies the remaining allegations contained in Paragraph 32 of the Complaint.

33. The allegations contained in Paragraph 33 of the Complaint constitute a legal conclusion to which a response is not required. To the extent a response is required, CWT denies the allegations contained in Paragraph 33 of the Complaint.

34. CWT is without knowledge as to the veracity of the allegations in Paragraph 34 of the Complaint and therefore denies the same.

35. CWT is without knowledge as to the veracity of the allegations in Paragraph 35 of the Complaint and therefore denies the same.

36. CWT is without knowledge as to the veracity of the allegations in Paragraph 36 of the Complaint and therefore denies the same.

37. CWT is without knowledge as to the veracity of the allegations in Paragraph 37 of the Complaint and therefore denies the same.

38. CWT is without knowledge as to the veracity of the allegations in Paragraph 38 of the Complaint and therefore denies the same.

39. CWT is without knowledge as to the veracity of the allegations in Paragraph 39 of the Complaint and therefore denies the same.

40. CWT is without knowledge as to the veracity of the allegations in Paragraph 40 of the Complaint and therefore denies the same.

41. CWT is without knowledge as to the veracity of the allegations in Paragraph 41 of the Complaint and therefore denies the same.

42. CWT is without knowledge as to the veracity of the allegations in Paragraph 42 of the Complaint and therefore denies the same.

43. CWT is without knowledge as to the veracity of the allegations in Paragraph 43 of the Complaint and therefore denies the same.

44. CWT is without knowledge as to the veracity of the allegations in Paragraph 44 of the Complaint and therefore denies the same.

45. CWT is without knowledge as to the veracity of the allegations in Paragraph 45 of

the Complaint and therefore denies the same.

46. CWT admits only that it offers cruise packages, but otherwise denies any remaining allegations contained in Paragraph 46 of the Complaint.

47. CWT is without knowledge as to the veracity of the allegations in Paragraph 47 of the Complaint and therefore denies the same.

48. CWT denies or is without knowledge as to the veracity of the allegations in Paragraph 48 of the Complaint and therefore denies the same.

49. CWT is without knowledge as to the veracity of the allegations in Paragraph 49 of the Complaint and therefore denies the same.

50. CWT is without knowledge as to the veracity of the allegations in Paragraph 50 of the Complaint and therefore denies the same.

51. CWT is without knowledge as to the veracity of the allegations in Paragraph 51 of the Complaint and therefore denies the same.

52. CWT is without knowledge as to the veracity of the allegations in Paragraph 52 of the Complaint and therefore denies the same.

53. CWT is without knowledge as to the veracity of the allegations in Paragraph 53 of the Complaint and therefore denies the same.

54. CWT denies or is without knowledge as to the veracity of the allegations in Paragraph 54 of the Complaint and therefore denies the same.

55. CWT is without knowledge as to the veracity of the allegations in Paragraph 55 of the Complaint and therefore denies the same.

56. CWT is without knowledge as to the veracity of the allegations in Paragraph 56 of the Complaint and therefore denies the same.

57. CWT is without knowledge as to the veracity of the allegations in Paragraph 57 of the Complaint and therefore denies the same.

58. CWT admits that Exhibit "A" to the Complaint speaks for itself. CWT denies or is without knowledge as to the veracity of the remaining allegations in Paragraph 58 of the Complaint and therefore denies the same.

59. CWT denies the allegations contained in Paragraph 59 of the Complaint.

60. CWT denies the allegations contained in Paragraph 60 of the Complaint.

61. CWT denies the allegations contained in Paragraph 61 of the Complaint.

62. CWT denies the allegations contained in Paragraph 62 of the Complaint.

63. CWT admits that Exhibit "B" speaks for itself. CWT denies the remaining allegations contained in Paragraph 63 of the Complaint.

64. CWT is without knowledge as to the veracity of the allegations in Paragraph 64 of the Complaint and therefore denies the same.

65. CWT is without knowledge as to the veracity of the allegations in Paragraph 65 of the Complaint and therefore denies the same.

66. CWT is without knowledge as to the veracity of the allegations in Paragraph 66 of the Complaint and therefore denies the same.

67. CWT denies the allegations contained in Paragraph 67 of the Complaint.

68. CWT denies the allegations contained in Paragraph 68 of the Complaint.

69. CWT denies the allegations contained in Paragraph 69 of the Complaint.

70. CWT denies the allegations contained in Paragraph 70 of the Complaint.

71. CWT admits that the allegations contained in Paragraph 71 of the Complaint allude to Exhibit "C" to the Complaint, which exhibit speaks for itself. Further, Paragraph 71 of

the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 71 of the Complaint.

72. CWT admits that the allegations contained in Paragraph 72 of the Complaint allude to Exhibit "C" to the Complaint, which exhibit speaks for itself. Further, Paragraph 72 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 72 of the Complaint.

73. CWT admits that Exhibit "C" to the Complaint speaks for itself. Further, Paragraph 73 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 73 of the Complaint.

74. CWT admits that the case referenced in Footnote 2 to Paragraph 74 of the Complaint speaks for itself. Further, Paragraph 74 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 74 of the Complaint.

75. CWT admits that Exhibit "D" to the Complaint speaks for itself. Further, Paragraph 75 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 75 of the Complaint.

76. CWT admits that Exhibit "E" to the Complaint speaks for itself. Further, Paragraph 76 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 76 of the Complaint.

77. Paragraph 77 of the Complaint does not contain any allegations pertaining to

CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 77 of the Complaint.

78. CWT admits that the allegations contained in Paragraph 78 allude to the case referenced in Footnote 3 to Paragraph 79 of the Complaint, which case speaks for itself. Further, Paragraph 78 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 78 of the Complaint.

79. CWT admits that the case referenced in Footnote 3 to Paragraph 79 of the Complaint speaks for itself. Further, Paragraph 79 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 79 of the Complaint.

80. CWT denies the allegations contained in Paragraph 80 of the Complaint.

81. Paragraph 81 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 81 of the Complaint.

82. Paragraph 82 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 82 of the Complaint.

83. Paragraph 83 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 83 of the Complaint.

84. Paragraph 84 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph

84 of the Complaint.

85. Paragraph 85 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 85 of the Complaint.

86. Paragraph 86 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 86 of the Complaint.

87. Paragraph 87 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 87 of the Complaint.

88. Paragraph 88 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 88 of the Complaint.

89. Paragraph 89 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 89 of the Complaint.

90. Paragraph 90 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 90 of the Complaint.

91. CWT admits that Exhibit "H" referenced in Footnote 4 to Paragraph 91 of the Complaint speaks for itself. Further, Paragraph 91 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 91 of the Complaint.

92. CWT admits that the cases referenced in Footnote 5 to Paragraph 92 of the Complaint speak for themselves. Further, Paragraph 92 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 92 of the Complaint.

93. Paragraph 93 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 93 of the Complaint.

94. Paragraph 94 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 94 of the Complaint.

95. CWT admits that Exhibit "I" cited in Footnote 6 to Paragraph 95 of the Complaint speaks for itself. Further, Paragraph 95 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 95 of the Complaint.

96. Paragraph 96 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT is without knowledge as to the veracity of the allegations contained in Paragraph 96 of the Complaint.

97. Paragraph 97 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT is without knowledge as to the veracity of the allegations contained in Paragraph 97 of the Complaint.

98. Paragraph 98 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT is without knowledge as to the veracity of the allegations contained in Paragraph 98 of the Complaint.

99. CWT admits that CWT is wholly owned by Consolidated Travel Holdings Group, Inc., but otherwise denies the remaining allegations contained in Paragraph 99 of the Complaint.

100. CWT admits CWT was incorporated in Florida on June 13, 2012. CWT denies the remaining allegations contained in Paragraph 100 of the Complaint.

101. CWT denies the allegations contained in Paragraph 101 of the Complaint.

102. CWT denies the allegations contained in Paragraph 102 of the Complaint.

103. CWT denies the allegations contained in Paragraph 103 of the Complaint.

104. CWT denies the allegations contained in Paragraph 104 of the Complaint.

105. CWT denies the allegations contained in Paragraph 105 of the Complaint.

106. CWT denies the allegations contained in Paragraph 106 of the Complaint.

107. CWT denies the allegations contained in Paragraph 107 of the Complaint.

108. CWT denies the allegations contained in Paragraph 108 of the Complaint.

109. CWT admits that Exhibit "F" to the Complaint speaks for itself. CWT denies any remaining allegations contained in Paragraph 109 of the Complaint.

110. CWT admits that the allegations contained in Paragraph 110 allude to Exhibit "G" referenced in Paragraph 111 of the Complaint, which exhibit speaks for itself. CWT denies any remaining allegations contained in Paragraph 110 of the Complaint.

111. CWT admits that Exhibit "G" to the Complaint speaks for itself. CWT denies any remaining allegations contained in Paragraph 111 of the Complaint.

112. Paragraph 112 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 112 of the Complaint.

113. CWT, based upon information and belief, denies the allegations contained in

Paragraph 113 of the Complaint.

114. CWT, upon information and belief, denies the allegations contained in Paragraph 114 of the Complaint.

115. Paragraph 115 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 115 of the Complaint.

116. Paragraph 116 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 116 of the Complaint.

117. CWT denies the allegations contained in Paragraph 117 of the Complaint.

118. CWT denies the allegations contained in Paragraph 118 of the Complaint.

119. CWT denies the allegations contained in Paragraph 119 of the Complaint.

120. Paragraph 120 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 120 of the Complaint.

121. CWT denies the allegations contained in Paragraph 121 of the Complaint.

122. Paragraph 122 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 122 of the Complaint.

123. CWT denies the allegations contained in Paragraph 123 of the Complaint.

124. Paragraph 124 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 124 of the Complaint.

125. Paragraph 125 of the Complaint does not contain any allegations pertaining to CWT. To the extent a response is required, CWT denies the allegations contained in Paragraph 125 of the Complaint.

126. Paragraph 126 of the Complaint states a legal conclusion to which a response is not required. To the extent a response is required, CWT denies the allegations contained in Paragraph 126 of the Complaint.

127. CWT denies the allegations contained in Paragraph 127 of the Complaint.

128. CWT denies the allegations contained in Paragraph 128 of the Complaint.

129. CWT denies the allegations contained in Paragraph 129 of the Complaint.

**V. CLASS ALLEGATIONS**

130. CWT admits only that Plaintiffs purport to bring this action as a class action and attempt to define a class, but denies that a class can be certified or if certified, would result in a class where liability under the TCPA could be imposed against CWT. Accordingly, CWT denies the allegations contained in Paragraph 130 of the Complaint.

131. CWT admits only that Plaintiffs purport to bring this action as a class action and attempt to define a class, but denies that a class can be certified or if certified, would result in a class where liability under the ATDA could be imposed against CWT. Accordingly, CWT denies the allegations contained in Paragraph 131 of the Complaint.

132. Paragraph 132 of the Complaint contains a legal conclusion to which a response is not required. To the extent a response is required, CWT denies the allegations contained in Paragraph 132 of the Complaint.

133. CWT denies the allegations contained in Paragraph 133 of the Complaint.

134. CWT denies the allegations contained in Paragraph 134 of the Complaint and refers all questions of law to the Court for its determination.

135. CWT denies the allegations in Paragraph 135, and all of its subparts a.-k., of the Complaint and refers all questions of law to the Court for its determination.

136. CWT denies the allegations contained in Paragraph 136 of the Complaint and refers all questions of law to the Court for its determination.

137. CWT denies the allegations in Paragraph 137 of the Complaint and refers all questions of law to the Court for its determination.

138. CWT denies the allegations in Paragraph 138 of the Complaint and refers all questions of law to the Court for its determination.

139. CWT denies the allegations contained in Paragraph 139 of the Complaint and refers all questions of law to the Court for its determination.

## **VI. CLAIMS ALLEGED**

### **COUNT I**

#### **Violation of the TCPA, 47 U.S.C. § 227** **(On behalf of the TCPA Class)**

140. CWT incorporates by reference its preceding responses as if fully set forth herein.

141. CWT denies the allegations contained in Paragraph 141 of the Complaint.

142. CWT denies the allegations contained in Paragraph 142 of the Complaint.

143. CWT denies the allegations contained in Paragraph 143 of the Complaint.

144. CWT denies the allegations contained in Paragraph 144 of the Complaint.

145. CWT denies the allegations contained in Paragraph 145 of the Complaint.

146. Paragraph 146 contains a legal conclusion to which a response is not required. To the extent a response is required, CWT denies the allegations contained in Paragraph 146 of the

Complaint.

**COUNT II**  
**Violation of the ATDA, 815 ILCS 305/1**  
**(On behalf of the ATDA Class)**

147. CWT incorporates by reference its preceding responses as if fully set forth herein.

148. Paragraph 148 of the Complaint contains a legal conclusion to which a response is not required. To the extent a response is required, CWT denies the allegations contained in Paragraph 148 of the Complaint.

149. CWT denies the allegations contained in Paragraph 149 of the Complaint.

150. CWT denies the allegations contained in Paragraph 150 of the Complaint.

151. CWT denies the allegations contained in Paragraph 151 of the Complaint.

152. CWT denies the allegations contained in Paragraph 152 of the Complaint.

153. CWT denies the allegations contained in Paragraph 153 of the Complaint.

154. CWT denies the allegations contained in Paragraph 154 of the Complaint.

155. CWT denies the allegations contained in Paragraph 155 of the Complaint.

156. CWT denies the allegations contained in Paragraph 156 of the Complaint.

157. CWT denies each and every allegation of the Complaint not specifically denied above.

**VII. JURY DEMAND**

CWT admits that Plaintiffs demand a jury trial in this action but denies that Plaintiffs or the other putative class members have any actionable or triable claims.

### **VIII. REQUEST FOR RELIEF**

CWT denies that Plaintiffs are entitled to any relief as set forth in the unnumbered “Request for Relief,” including its subsections A. – E.

### **AFFIRMATIVE DEFENSES**

CWT states that it intends to rely upon and otherwise preserve the following defenses in defense of Plaintiffs' Complaint, and respectfully reserves the right to assert other defenses if facts learned in discovery warrant amendment of CWT's Affirmative Defenses. Accordingly, CWT asserts the following Affirmative Defenses:

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiffs fail to state a plausible claim upon which relief can be granted under any theory of action, including but not limited to the Telephone Consumer Protection Act (“TCPA”) 47 U.S.C. § 227, and the Illinois Automatic Telephone Dialers Act (“ATDA”), 815 ILCS 305/1, *et seq.*

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiffs fail to state a plausible cause of action for class relief pursuant to Federal Rule of Civil Procedure 23, in that, *inter alia*, Plaintiffs cannot identify an ascertainable class, the claims Plaintiffs assert cannot be common or typical of the claims of the putative class, and class relief is not superior to other available methods for fairly and efficiently adjudicating the claims Plaintiffs assert warrant class treatment. Further, the proposed class is overly broad.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiffs lack standing under Article III of the Constitution, and, accordingly, this Court does not have subject matter jurisdiction over this action. *Spokeo v. Robins*, 136 S. Ct. 1540 (2016).

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs fail to satisfy all conditions precedent and necessary to maintaining the claims alleged in the Complaint.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' damages, if any, and none being admitted, were not caused by CWT but by another person or entity, including Plaintiffs and/or the other putative class members, for whom CWT is not responsible and over whose activities CWT exercises no control and/or has no right to control.

**SIXTH AFFIRMATIVE DEFENSE**

CWT is not vicariously or otherwise liable for the acts of any third parties making and/or initiating the complained of telephone call(s) to Plaintiffs because any such third parties were, at all relevant times, separate and distinct entities from CWT, were not CWT's agents, and CWT did not have ownership, direction, or exercise substantial control over their actions.

**SEVENTH AFFIRMATIVE DEFENSE**

CWT is not vicariously or otherwise liable for the acts of any third parties making and/or initiating the complained of telephone call(s) to Plaintiffs. To the extent that any such third parties are deemed CWT's agents, such parties were acting outside the scope of their authority and any agency relationship with CWT, and CWT did not ratify their actions.

**EIGHTH AFFIRMATIVE DEFENSE**

CWT is not liable for the acts of any third parties making and/or initiating the complained of telephone call(s) to Plaintiffs because CWT was never a joint venturer with any such third parties. At all times relevant to this action, such third parties and CWT never had an express or implied contract providing for: (1) a community of interests; (2) the right to share profits, and (3)

an equal right to direct and govern the undertaking. *See Secon Service System, Inc. v. St. Joseph Bank and Trust Co.*, 855 F. 2d 406, 416 (7th Cir. 1988).

**NINTH AFFIRMATIVE DEFENSE**

To the extent Plaintiffs seeks to hold CWT liable under any theory of vicarious liability, agency or joint venture, no such claims have not been specifically or sufficiently pled.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of estoppel due to their and the other putative class members' consent to be called on their cellular and/or residential telephones. For any such calls, and none being admitted, CWT reasonably relied on all called persons' consent and pre-authorization before initiating its telephone calls, and has been detrimentally impacted by this unjustified suit involving pre-authorized calls. *See Kennedy v. U.S.*, 965 F.2d 413, 417 (7th Cir. 1992).

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the Doctrines of Laches and Waiver for Plaintiffs' failure to timely notify the alleged callers that the calls allegedly made to Plaintiff and the other putative class members' cellular and/or residential telephone(s) should cease. *See Allegheny Airlines, Inc. v. Forth Corp.*, 663 F.2d 751 (7th Cir. 1981).

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the Doctrine of Unclean Hands due to their and the other putative class members' consent to be called on their cellular and/or residential telephones. *See Weber Shandwick Worldwide v. Reid*, 2005 WL 1651030 (N.D. Ill. 2005).

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the Doctrine of *In Pari Delicto*. At all relevant times Plaintiff and the other putative class members consented to the telephone calls complained of in the Complaint, including calls to their cellular and residential telephone numbers. *See Pinter v. Dahl*, 108 S. Ct. 2063 (1987).

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the doctrine of ratification due to Plaintiffs' and the other putative class members' failure to timely notify the alleged callers that the complained of calls should cease. *See In re Ostrom-Martin, Inc.*, 202 B.R. 267 (N.D. Ill. 1996).

**FIFTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the alleged caller(s)' use of any automatic telephone dialing system as defined under the TCPA and/or use of a prerecorded voice was consented to by Plaintiffs and the other putative class members. *See* 47 U.S.C. §227(b)(1)(A)(iii).

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the complained of telephone calls alleged in the Complaint were conducted with a live human, and thus, any such calls do not violate the TCPA.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the telephone calls about which Plaintiffs complain were, at all times, monitored by a live human agent who was interacting with the caller during the telephone call and was available to speak with the called party at any time. Thus, any such telephone calls (if any) would not violate the TCPA and would not constitute calls via artificial or pre-recorded voices.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred for failure to join necessary and indispensable parties.

**NINETEENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred by the applicable statutes of limitation.

**TWENTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because Plaintiffs did not suffer any actual damages.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claims for treble damages are barred because CWT did not engage in knowing or willful misconduct vis-à-vis Plaintiff and/or the other putative class members.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

Plaintiffs have failed to mitigate their damages, if any, based in part on their failure to timely notify all alleged callers that the alleged calls to their cellular and/or residential telephone(s) should cease.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

CWT complied with all applicable statutory, regulatory, and common law requirements and accordingly, Plaintiffs' claims are barred by CWT's compliance with all applicable State, Federal, and local laws and regulations.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the TCPA violates CWT's First Amendment right to free speech. Specifically, the TCPA improperly inhibits the exercise of constitutionally protected speech.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the TCPA, within the context of a class action, is violative of CWT's constitutional rights under the Eighth Amendment prohibition against excessive fines and cruel and unusual punishment.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

Maintenance of this action as a class action is inconsistent with the legislative intent of the TCPA in that the United States Congress intended that claims under the TCPA proceed as individual actions. The TCPA's legislative history supports a conclusion that class actions were not intended, but rather that Congress envisioned the statute as providing a private right of action to consumers receiving the specifically prohibited communications, allowing them to pursue the statutory damages of \$500 in small claims court without an attorney. In holding that a class action could not proceed under the TCPA, one federal district court determined that "the statutory remedy is designed to provide adequate incentive for an individual plaintiff to bring suit on his own behalf...A class action would be inconsistent with the specific and personal remedy provided by Congress to address the minor nuisance of unsolicited facsimile advertisements. *See Forman v. Data Transfer, Inc.*, 164 F.R.D. 400, 404-405 (E.D. Pa. 1995).

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred by the exceptions provided under the TCPA.

**TWENTY-EIGHT AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the complained of calls do not constitute a "telephone solicitation" under the TCPA. *See* 47 U.S.C. §227(a)(4); *Practice Management Support Svcs., Inc. v. Appeal Solutions, Inc.*, 2010 WL 748170, \*2 (N.D. Ill. 2010).

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

Plaintiffs' claims are barred because the complained of calls do not constitute an "unsolicited advertisement" under the TCPA. *See* 47 U.S.C. §227(a)(5); *Alleman v. Yellowbook*, 2013 WL 4782217, \*4 (S.D. Ill. 2013).

**THIRTIETH AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred, precluded or subject to a stay pursuant to the doctrine of primary jurisdiction and the inherent authority of this Court in light of pending FCC Petitions for Declaratory Relief regarding issues critical to this action and/or in light of substantially similar earlier filed class actions involving similar parties, subject matter and proposed class definitions.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

Plaintiffs' claims may be barred, precluded or subject to a stay pursuant to the jurisdictional "First-Filed Rule" and the inherent authority of this Court in light of substantially similar earlier filed class actions involving similar parties, subject matter and proposed class definitions. *See Pfizer Inc. v. Apotex Inc.*, 640 F. Supp. 2d 1006, 1008 (N.D. Ill. 2009).

**RESERVATION**

Plaintiff's Complaint does not describe the claims made against CWT with sufficient particularity to enable CWT to determine all additional defenses it may have in response to the Complaint. Accordingly, CWT reserves the right to amend its Answer and Affirmative Defenses up and through the time of trial to assert any additional affirmative defenses, when and if, during the course of its investigation, discovery or preparation for trial, it becomes appropriate to assert such affirmative defenses.

**WHEREFORE**, Defendant, Consolidated World Travel, Inc. d/b/a Holiday Cruise Line, respectfully requests that this Court enter judgment against Plaintiffs and in favor of CWT,

dismiss this action with prejudice as against CWT, deny Plaintiffs' request for class certification, award CWT its reasonable attorney's fees and costs incurred in defending this action, and for such other relief this Court deems just and proper.

DATED: August 23, 2016

Respectfully Submitted,

/s/ Jeffrey A. Backman  
Richard W. Epstein, Esq.  
FL BAR NO. 229091  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 23, 2016, I electronically filed the foregoing with the Clerk of Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel identified on the Service List below in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notice of Electronic Filing.

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