

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

**JOHN KARPILOVSKY and JIMMIE)
CRIOLLO, JR., individually and on)
behalf of all others similarly situated,)
)
Plaintiff,)
)
vs.)
)
ALL WEB LEADS, INC.)
)
Defendant.)**

Case No. 1:17-cv-01307

**ANSWER TO PLAINTIFFS' FIRST
AMENDED CLASS ACTION
COMPLAINT**

COMES NOW Defendant, All Web Leads, Inc., by and through counsel, and for its answer to Plaintiffs' First Amended Class Action Complaint states as follows:

NATURE OF THE ACTION

1. Defendant admits that it owns and operates websites that offer health insurance quotes, but denies the remaining allegations set forth in paragraph one of Plaintiffs' First Amended Class Action Complaint.
2. Defendant denies the allegations set forth in paragraph two of Plaintiffs' First Amended Class Action Complaint.

JURISDICTION AND VENUE

3. Defendant denies the allegations set forth in paragraph three of Plaintiffs' First Amended Class Action Complaint.
4. Defendant admits that this Court has federal question jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. §§ 227 *et seq.*

5. Defendant admits that this Court has personal jurisdiction under 28 U.S.C. § 1331 and 47 U.S.C. §§ 227 *et seq.*

6. Defendant admits that venue is proper.

PARTIES

7. Defendant is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation and therefore denies the allegations set forth in paragraph seven of Plaintiffs' First Amended Class Action Complaint.

8. Defendant is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation and therefore denies the allegations set forth in paragraph eight of Plaintiffs' First Amended Class Action Complaint.

9. Defendant admits the allegations set forth in paragraph nine of Plaintiffs' First Amended Class Action Complaint.

TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227

10. The statute set forth in paragraph 10 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

11. The statute set forth in paragraph 11 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

12. The statute set forth in paragraph 12 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

13. The Federal Communications Commission ("FCC") language paraphrased in paragraph 13 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

14. The FCC language set forth in paragraph 14 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

15. The FCC language set forth in paragraph 15 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

16. The FCC language set forth in paragraph 16 of Plaintiffs' First Amended Class Action Complaint speaks for itself and does not require a response from Defendant.

FACTUAL ALLEGATIONS

17. Defendant denies the allegations set forth in paragraph 17 of Plaintiffs' First Amended Class Action Complaint.

18. Defendant is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation as to the use of the term "autodialed" as it is not defined in the Telephone Consumer Protection Act ("TCPA"), and therefore denies the allegations set forth in paragraph 18 of Plaintiffs' First Amended Class Action Complaint.

19. Defendant admits the allegations set forth in paragraph 19 of Plaintiffs' First Amended Class Action Complaint.

20. Defendant admits that it owns and operates www.affordable-health-insurance-plans.org and the website contains the text "Compare Affordable Health Insurance Plans Right Now! The Fastest Way to Get On & Off Exchange Quotes!" but denies the remaining allegations set forth in paragraph 20 of Plaintiffs' First Amended Class Action Complaint.

21. Defendant admits that after consumers enter their zip code, they are transferred to another webpage to fill out additional information to receive health insurance quotes and the website states "The Fastest Way to Get Free Health Insurance Quotes!", but denies the remaining allegations set forth in paragraph 21 of Plaintiffs' First Amended Class Action Complaint.

22. Defendant admits that after consumers fill out the quote form, they are contacted at the phone number they provided by a representative of All Web Leads or its customers, but denies the remaining allegations set forth in paragraph 22 of Plaintiffs' First Amended Class Action Complaint.

23. Defendant admits the allegations set forth in paragraph 23 of Plaintiffs' First Amended Class Action Complaint.

24. Defendant admits that the prior express written consent language is displayed on the webpage that provides the health insurance quote form, below the "Submit" button, but denies the remaining allegations set forth in paragraph 24 of Plaintiffs' First Amended Class Action Complaint.

25. Defendant denies the allegations set forth in paragraph 25 of Plaintiffs' First Amended Class Action Complaint.

26. Defendant denies the allegations set forth in paragraph 26 of Plaintiffs' First Amended Class Action Complaint.

27. Defendant denies the allegations set forth in paragraph 27 of Plaintiffs' First Amended Class Action Complaint.

28. Defendant denies the allegations set forth in paragraph 28 of Plaintiffs' First Amended Class Action Complaint.

29. Defendant denies the allegations set forth in paragraph 29 of Plaintiffs' First Amended Class Action Complaint.

30. Defendant denies the allegations set forth in paragraph 30 of Plaintiffs' First Amended Class Action Complaint.

31. Defendant denies the allegations set forth in paragraph 31 of Plaintiffs' First Amended Class Action Complaint.

Plaintiff Karpilovsky

32. Defendant admits that Karpilovsky visited www.affordable-health-insurance-plans.org on June 23, 2017, but is without sufficient knowledge to form an opinion as to the truth or falsity of the remaining allegations and therefore denies the remaining allegations set forth in paragraph 32 of Plaintiffs' First Amended Class Action Complaint.

33. Defendant admits the allegations set forth in paragraph 33 of Plaintiffs' First Amended Class Action Complaint.

34. Defendant admits that Karpilovsky provided his name, address and cell phone number and then clicked the "Submit" button, but is without sufficient knowledge to form an opinion as to the truth or falsity of the remaining allegations and therefore denies the remaining allegations set forth in paragraph 34 of Plaintiffs' First Amended Class Action Complaint.

35. Defendant admits that it made a call to Karpilovsky from telephone number (847) 686-3264, but is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation as to the use of the term "autodialed" as it is not defined in the TCPA, and therefore denies the remaining allegations set forth in paragraph 35 of Plaintiffs' First Amended Class Action Complaint.

36. Defendant is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation and therefore denies the allegations set forth in paragraph 36 of Plaintiffs' First Amended Class Action Complaint.

37. Defendant admits the allegations set forth in paragraph 37 of Plaintiffs' First Amended Class Action Complaint.

38. Defendant denies the allegations set forth in paragraph 38 of Plaintiffs' First Amended Class Action Complaint.

39. Defendant denies the allegations set forth in paragraph 39 of Plaintiffs' First Amended Class Action Complaint.

Plaintiff Criollo

40. Defendant admits that Criollo visited www.affordable-health-insurance-plans.org, but denies the remaining allegations set forth in paragraph 40 of Plaintiffs' First Amended Class Action Complaint.

41. Defendant admits the allegations set forth in paragraph 41 of Plaintiffs' First Amended Class Action Complaint.

42. Defendant admits that Criollo provided his name, address and cell phone number and then clicked the "Submit" button, but is without sufficient knowledge to form an opinion as to the truth or falsity of the remaining allegations and therefore denies the remaining allegations set forth in paragraph 42 of Plaintiffs' First Amended Class Action Complaint.

43. Defendant admits that it made a call to Criollo, but is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation as to the use of the term "autodialed" as it is not defined in the TCPA and therefore denies the remaining allegations set forth in paragraph 43 of Plaintiffs' First Amended Class Action Complaint.

44. Defendant is without sufficient knowledge to form an opinion as to the truth or falsity of the allegation and therefore denies the allegations set forth in paragraph 44 of Plaintiffs' First Amended Class Action Complaint.

45. Defendant admits the allegations set forth in paragraph 45 of Plaintiffs' First Amended Class Action Complaint.

46. Defendant denies the allegations set forth in paragraph 46 of Plaintiffs' First Amended Class Action Complaint.

47. Defendant denies the allegations set forth in paragraph 47 of Plaintiffs' First Amended Class Action Complaint.

48. Defendant denies the allegations set forth in paragraph 48 of Plaintiffs' First Amended Class Action Complaint.

CLASS ACTION ALLEGATIONS

49. Defendant incorporates all previous responses contained in paragraphs 1 through 48.

50. Defendant denies the allegations set forth in paragraph 50 of Plaintiffs' First Amended Class Action Complaint.

51. Defendant denies the allegations set forth in paragraph 51 of Plaintiffs' First Amended Class Action Complaint.

52. Defendant denies the allegations set forth in paragraph 52 of Plaintiffs' First Amended Class Action Complaint.

53. Defendant denies the allegations set forth in paragraph 53 of Plaintiffs' First Amended Class Action Complaint.

54. Defendant denies the allegations set forth in paragraph 54 of Plaintiffs' First Amended Class Action Complaint.

55. Defendant denies the allegations set forth in paragraph 55 of Plaintiffs' First Amended Class Action Complaint.

56. Defendant denies the allegations set forth in paragraph 56 of Plaintiffs' First Amended Class Action Complaint.

57. Defendant denies the allegations set forth in paragraph 57 of Plaintiffs' First Amended Class Action Complaint.

58. Defendant denies the allegations set forth in paragraph 58 of Plaintiffs' First Amended Class Action Complaint.

59. Defendant denies the allegations set forth in paragraph 59 of Plaintiffs' First Amended Class Action Complaint.

60. Defendant denies the allegations set forth in paragraph 60 of Plaintiffs' First Amended Class Action Complaint.

61. Defendant denies the allegations set forth in paragraph 61 of Plaintiffs' First Amended Class Action Complaint.

62. Defendant denies the allegations set forth in paragraph 62 of Plaintiffs' First Amended Class Action Complaint.

63. Defendant denies the allegations set forth in paragraph 63 of Plaintiffs' First Amended Class Action Complaint.

64. Defendant denies the allegations set forth in paragraph 64 of Plaintiffs' First Amended Class Action Complaint.

65. Defendant denies the allegations set forth in paragraph 65 of Plaintiffs' First Amended Class Action Complaint.

66. Defendant denies the allegations set forth in paragraph 66 of Plaintiffs' First Amended Class Action Complaint.

67. Defendant denies the allegations set forth in paragraph 67 of Plaintiffs' First Amended Class Action Complaint.

68. Defendant denies the allegations set forth in paragraph 68 of Plaintiffs' First Amended Class Action Complaint.

69. Defendant denies the allegations set forth in paragraph 69 of Plaintiffs' First Amended Class Action Complaint.

70. Defendant denies the allegations set forth in paragraph 70 of Plaintiffs' First Amended Class Action Complaint.

71. Defendant denies the allegations set forth in paragraph 71 of Plaintiffs' First Amended Class Action Complaint.

72. Defendant denies the allegations set forth in paragraph 72 of Plaintiffs' First Amended Class Action Complaint.

CAUSES OF ACTION

Count I – Violations of the TCPA, 47 U.S.C. §§ 227 *et seq.*

73. Defendant incorporates all previous responses contained in paragraphs 1 through 72.

74. Defendant denies the allegations set forth in paragraph 74 of Plaintiffs' First Amended Class Action Complaint.

75. Defendant denies the allegations set forth in paragraph 75 of Plaintiffs' First Amended Class Action Complaint.

76. Defendant denies the allegations set forth in paragraph 76 of Plaintiffs' First Amended Class Action Complaint.

77. Defendant denies the allegations set forth in paragraph 77 of Plaintiffs' First Amended Class Action Complaint.

Count II – Knowing and/or Willful Violations of the TCPA, 47 U.S.C. §§ 227 *et seq.*

78. Defendant incorporates all previous responses contained in paragraphs 1 through 77.

79. Defendant denies the allegations set forth in paragraph 79 of Plaintiffs' First Amended Class Action Complaint.

80. Defendant denies the allegations set forth in paragraph 80 of Plaintiffs' First Amended Class Action Complaint.

81. Defendant denies the allegations set forth in paragraph 81 of Plaintiffs' First Amended Class Action Complaint.

82. Defendant denies the allegations set forth in paragraph 82 of Plaintiffs' First Amended Class Action Complaint.

SEPARATE DEFENSES

1. Defendant has complied in all respects with any and all obligations that it may have owed to Plaintiff.

2. Plaintiffs provided their prior express written consent to receive calls on their cell phone from Defendant.

3. Plaintiffs provided their prior express consent to receive calls on his cell phone that deliver a "health care" message made by, or on behalf of, a "covered entity" or its "business associate," as those terms are defined in the HIPAA Privacy Rule, 45 C.F.R. § 160.103.

4. Plaintiffs were not charged for any call made by Defendant to Plaintiffs' cell phone numbers.

5. Plaintiffs' First Amended Complaint is barred, in whole or in part, by the doctrine of laches.

6. Plaintiffs' First Amended Complaint is barred, in whole or in part, by the doctrine of unclean hands.

7. Plaintiffs' First Amended Complaint is barred, in whole or in part, by the doctrine of waiver.

8. Plaintiffs' First Amended Complaint is barred, in whole or in part, by one or more of the respective doctrines of estoppel.

9. Plaintiffs lack standing to sue Defendant.

10. Plaintiffs have not incurred any actual injury or damages.

11. The TCPA's cell phone call ban, 47 U.S.C. § 227(b)(1)(A)(iii), is an unconstitutional violation of Defendant's First Amendment rights because it is content based and cannot withstand strict scrutiny.

12. Any recovery by Plaintiffs of statutory damages violates Defendant's rights to due process of law under the Fifth and Fourteenth Amendments to the United States Constitution and under the Illinois Constitution.

13. If Plaintiffs have sustained any damages, all such damages were not caused by Defendant, but were caused by the acts or omissions of third-parties over whom Defendant has no control.

14. Plaintiffs are not entitled to recovery, in whole or in part, based upon failure to mitigate damages. As such, any recovery should be reduced or precluded to the extent of such failure.

15. Defendant did not engage in any knowing or willful conduct toward Plaintiffs.

16. The claim asserted by Plaintiffs is not so numerous that joinder of all members of the putative class is impracticable.

17. The putative class is not ascertainable.

18. The claim asserted by Plaintiffs does not raise questions of law or fact common to the putative class.

19. Neither the claim asserted by Plaintiffs nor the defenses available to and asserted by Defendant is typical of those of the putative class.

20. Neither the named class representatives nor their counsel will fairly and adequately protect the interests of the putative class.

21. The claim asserted by Plaintiffs does not raise common questions that will predominate or promote the manageability of this action.

22. Class treatment is not superior to other available methods for the fair and efficient adjudication of this action.

23. Defendant reserves the right to assert such other and additional defenses for which discovery may reveal a factual basis.

24. The allegations of the Complaint are not well-grounded either in fact or in law, and/or have been asserted for an improper purpose, and Defendant reserves the right to seek an award of counsel fees and costs of suit against Plaintiffs based thereon.

WHEREFORE Defendant, having fully answered Plaintiffs' First Amended Class Action Complaint, respectfully requests that the Court dismiss this case with prejudice, and award Defendant any other relief the Court deems equitable and just.

Dated: August 8, 2017

Respectfully submitted,

/s/ Jeffrey S. Bunn

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Attorneys for Defendant All Web Leads, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing on the following parties via the Court's CM/ECF electronic filing system on this 8th day of August, 2017:

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