

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 18-61017-CIV-ALTONAGA/Seltzer

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

POINTBREAK MEDIA, LLC, *et al.*,

Defendants.

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**DEFENDANT, RICARDO DIAZ'S ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Defendant, Ricardo Diaz ("Defendant" and/or "Diaz"), by and through undersigned counsel, answers and submits affirmative defenses to Plaintiff, the Federal Trade Commission's ("FTC" or "Commission") First Amended Complaint as follows:

1. Neither admitted nor denied. Plaintiff has set forth a prefatory paragraph to which no response is required. To the extent a response is required, Defendant Diaz denies that Plaintiff is entitled to any relief of its claims.

JURISDICTION AND VENUE

2. Admitted.

3. Admitted.

PLAINTIFF

4. Neither admitted nor denied to the extent that paragraph 4 purports to describe the FTC Act, the Telemarketing Act, and the TSR and those statutes and codes are the best evidence of their contents and, as such, no response is required from Defendant Diaz. To the extent a response is required, Defendant Diaz denies that Plaintiff is entitled to any relief of its claims.

5. Neither admitted nor denied to the extent that paragraph 5 purports to describe the FTC Act and that act is the best evidence of its contents and, as such, no response is required from Defendant Diaz. To the extent a response is required, Defendant Diaz denies that Plaintiff is entitled to any relief of its claims.

DEFENDANTS

6. The allegations contained in paragraph 6 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

7. The allegations contained in paragraph 7 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

8. The allegations contained in paragraph 8 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

9. The allegations contained in paragraph 9 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

10. The allegations contained in paragraph 10 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or

wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

11. The allegations contained in paragraph 11 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

12. The allegations contained in paragraph 12 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

13. The allegations contained in paragraph 13 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

14. The allegations contained in paragraph 14 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

15. The allegations contained in paragraph 15 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

16. The allegations contained in paragraph 16 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

17. The allegations contained in paragraph 17 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

18. The allegations contained in paragraph 18 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

19. Admitted in part, denied in part. Defendant Diaz admits that on Defendant Pointbreak Media LLC's Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida filed with the Division of Corporations for the State of Florida he was listed as "treasurer" and "managing member", however, he never served as or performed (or had the authority to perform) the duties of treasurer or managing member and owned a ten percent (10%) non-controlling membership interest in Defendant Pointbreak Media LLC for the limited period from January of 2017 through August of 2017. Defendant Diaz further admits that he currently resides part time in Cranston, Rhode Island and in Miramar, Florida. The remaining allegations of paragraph 19 are denied.

20. The allegations contained in paragraph 20 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or

wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

21. The allegations contained in paragraph 21 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

22. The allegations contained in paragraph 22 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

23. The allegations contained in paragraph 23 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

RELIEF DEFENDANTS

24. The allegations contained in paragraph 24 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

25. The allegations contained in paragraph 25 are not directed towards Defendant Diaz, therefore, no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

COMMON ENTERPRISE

26. Defendant Diaz denies the allegations contained in paragraph 26.

27. Defendant Diaz denies the allegations contained in paragraph 27.

COMMERCE

28. The allegations contained in paragraph 28 set forth legal conclusions to which no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

DEFENDANTS' BUSINESS ACTIVITIES

Overview

29. Paragraph 29 makes general allegations against all Defendants collectively and not Defendant Diaz individually. To the extent paragraph 29 alleges any liability or wrongdoing against Defendant Diaz, those allegations are denied.

30. Paragraph 30 makes general allegations against all Defendants collectively and not Defendant Diaz individually. To the extent paragraph 30 alleges any liability or wrongdoing against Defendant Diaz, he is without sufficient information to either admit or deny these allegations and therefore denies.

31. Paragraph 31 makes general allegations against all Defendants collectively and not Defendant Diaz individually. To the extent paragraph 31 alleges any liability or wrongdoing against Defendant Diaz, he is without sufficient information to either admit or deny these allegations and therefore denies.

Google My Business

32. Paragraph 32 makes general allegations against all Defendants collectively and not Defendant Diaz individually. To the extent paragraph 32 alleges any liability or wrongdoing against Defendant Diaz, he is without sufficient information to either admit or deny these allegations and therefore denies.

33. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 33 and therefore denies.

34. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 34 and therefore denies.

Defendants Target Consumers with Threatening Robocalls

35. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 35 and therefore denies.

36. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 36 and therefore denies.

37. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 37 and therefore denies.

38. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 38 and therefore denies.

39. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 39 and therefore denies.

40. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 40 and therefore denies.

41. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 41 and therefore denies.

42. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 42 and therefore denies.

43. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 43 and therefore denies.

44. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 44 and therefore denies.

45. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 45 and therefore denies.

46. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 46 and therefore denies.

Defendants' Sales Agents Use False Statements to Sell Google Listing Services

47. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 47 and therefore denies.

48. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 48 and therefore denies.

49. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 49 and therefore denies.

Defendants' Claims of Google Authorization or Affiliation

50. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 50 and therefore denies.

51. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 51 and therefore denies.

52. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 52 and therefore denies.

53. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 53 and therefore denies.

54. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 54 and therefore denies.

55. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 55 and therefore denies.

56. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 56 and therefore denies.

57. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 57 and therefore denies.

58. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 58 and therefore denies.

Defendants' Threats of Removal from Google

59. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 59 and therefore denies.

60. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 60 and therefore denies.

61. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 61 and therefore denies.

62. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 62 and therefore denies.

63. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 63 and therefore denies.

64. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 64 and therefore denies.

65. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 65 and therefore denies

66. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 66 and therefore denies.

67. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 67 and therefore denies.

68. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 68 and therefore denies.

69. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 69 and therefore denies.

Defendants' Promises of Unique Keywords Linked to the Consumer's Business

70. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 70 and therefore denies.

71. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 71 and therefore denies.

72. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 72 and therefore denies.

73. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 73 and therefore denies.

74. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 74 and therefore denies.

75. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 75 and therefore denies.

76. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 76 and therefore denies.

77. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 77 and therefore denies.

78. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 78 and therefore denies.

79. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 79 and therefore denies.

80. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 80 and therefore denies.

81. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 81 and therefore denies.

82. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 82 and therefore denies.

83. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 83 and therefore denies.

84. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 84 and therefore denies.

85. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 85 and therefore denies.

Defendants Upsell Consumers on a “Citation Program”

86. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 86 and therefore denies.

87. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 87 and therefore denies.

88. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 88 and therefore denies.

89. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 89 and therefore denies.

90. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 90 and therefore denies.

91. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 91 and therefore denies.

92. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 92 and therefore denies.

93. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 93 and therefore denies.

94. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 94 and therefore denies.

95. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 95 and therefore denies.

Defendants' Unauthorized Consumer Billing

96. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 96 and therefore denies.

97. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 97 and therefore denies.

98. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 98 and therefore denies.

**DEFENDANTS' COMMON ENTERPRISE AND
SHIFTING CORPORATE IDENTITIES**

99. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 99 and therefore denies.

Pointbreak Media, LLC

100. Defendant Diaz admits that Defendant Pointbreak Media LLC was formed in Delaware, but as to the remaining allegation contained in paragraph 100, Defendant Diaz is without sufficient information to either admit or deny those allegations and therefore denies.

101. Defendant Diaz admits the allegations contained in paragraph 101.

102. Defendant Diaz admits that on Defendant Pointbreak Media LLC's Application by Foreign Limited Liability Company for Authorization to Transact Business in Florida filed with the Division of Corporations for the State of Florida he was listed as "treasurer", "managing member" and "registered agent", however, he never served as or performed (or had the authority to perform) the duties of treasurer or managing member and owned a ten percent (10%) non-controlling membership interest in Defendant Pointbreak Media LLC for the limited period from

January of 2017 through August of 2017. As to the remaining allegations contained in paragraph 102, Defendant Diaz is without sufficient information to either admit or deny those allegations and therefore denies.

103. Defendant Diaz admits the allegations contained in paragraph 103.

104. Defendant Diaz admits that Point Break employed Defendant Yates. As to the remaining allegations contained in paragraph 104, Defendant Diaz is without sufficient information to either admit or deny those allegations and therefore denies.

105. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 105 and therefore denies.

106. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 106 and therefore denies.

107. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 107 and therefore denies.

108. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 108 and therefore denies.

109. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 109 and therefore denies.

110. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 110 and therefore denies.

111. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 111 and therefore denies.

112. Admitted in part, denied in part. Defendant Diaz admits that he served as the signatory on behalf of non-party ConsultMe, LLC to sign a lease for office space. As to the

remaining allegations contained in paragraph 112, Defendant Diaz is without sufficient information to either admit or deny those allegations and therefore denies.

113. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 113 and therefore denies.

114. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 114 and therefore denies.

115. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 115 and therefore denies.

116. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 116 and therefore denies.

117. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 117 and therefore denies.

118. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 118 and therefore denies.

119. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 119 and therefore denies.

120. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 120 and therefore denies.

121. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 121 and therefore denies.

122. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 122 and therefore denies.

123. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 123 and therefore denies.

124. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 124 and therefore denies.

DCP Marketing, LLC

125. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 125 and therefore denies.

126. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 126 and therefore denies.

127. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 127 and therefore denies.

128. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 128 and therefore denies.

129. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 129 and therefore denies.

130. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 130 and therefore denies.

131. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 131 and therefore denies.

132. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 132 and therefore denies.

133. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 133 and therefore denies.

134. Defendant Diaz denies the allegations set forth in paragraph 134 to the extent they express or imply ownership or control over non-party ConsultMe, LLC by Defendant Diaz, and with respect to the remaining allegations contained in paragraph 134, Defendant Diaz is without sufficient information to either admit or deny the allegations and therefore denies.

135. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 135 and therefore denies.

136. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 136 and therefore denies.

Modern Spotlight LLC and Modern Spotlight Group LLC

137. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 137 and therefore denies.

138. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 138 and therefore denies.

139. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 139 and therefore denies.

140. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 140 and therefore denies.

141. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 141 and therefore denies.

142. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 142 and therefore denies.

143. Admitted in part, denied in part. Defendant Diaz admits that he eventually learned that Modern Spotlight LLC was using Point Break's merchant account to process credit card

transactions. Defendant Diaz affirmatively states that when he learned of this activity he confronted Defendant Pillonato and Defendant Ramsey and immediately resigned. Defendant Diaz is without sufficient information to either admit or deny the remaining allegations contained in paragraph 143 and therefore denies.

144. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 144 and therefore denies.

145. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 145 and therefore denies.

146. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 146 and therefore denies.

147. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 147 and therefore denies.

148. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 148 and therefore denies.

149. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 149 and therefore denies.

150. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 150 and therefore denies.

151. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 151 and therefore denies.

152. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 152 and therefore denies.

153. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 153 and therefore denies.

154. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 154 and therefore denies.

155. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 155 and therefore denies.

156. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 156 and therefore denies.

157. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 157 and therefore denies.

158. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 158 and therefore denies.

159. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 159 and therefore denies.

160. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 160 and therefore denies.

161. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 161 and therefore denies.

Modern Source Media, LLC

162. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 162 and therefore denies.

163. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 163 and therefore denies.

164. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 164 and therefore denies.

165. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 165 and therefore denies.

166. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 166 and therefore denies.

167. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 167 and therefore denies.

168. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 168 and therefore denies.

169. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 169 and therefore denies.

170. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 170 and therefore denies.

171. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 171 and therefore denies.

172. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 172 and therefore denies.

173. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 173 and therefore denies.

Perfect Image Online LLC

174. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 174 and therefore denies.

175. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 175 and therefore denies.

176. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 176 and therefore denies.

177. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 177 and therefore denies.

178. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 178 and therefore denies.

179. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 179 and therefore denies.

Modern Internet Marketing LLC

180. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 180 and therefore denies.

181. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 181 and therefore denies.

182. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 182 and therefore denies.

183. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 183 and therefore denies.

184. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 184 and therefore denies.

Allstar Data, LLC

185. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 185 and therefore denies.

186. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 186 and therefore denies.

187. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 187 and therefore denies.

188. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 188 and therefore denies.

189. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 189 and therefore denies.

190. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 190 and therefore denies.

191. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 191 and therefore denies.

National Business Listings, LLC

192. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 192 and therefore denies.

193. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 193 and therefore denies.

194. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 194 and therefore denies.

195. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 195 and therefore denies.

196. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 196 and therefore denies.

197. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 197 and therefore denies.

Pinnacle Presence LLC

198. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 198 and therefore denies.

199. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 199 and therefore denies.

200. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 200 and therefore denies.

201. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 201 and therefore denies.

202. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 202 and therefore denies.

203. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 203 and therefore denies.

204. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 204 and therefore denies.

VIOLATIONS OF SECTION 5 OF THE FTC ACT

205. Neither admitted nor denied to the extent that paragraph 205 purports to describe the FTC Act and that act is the best evidence of its contents and no response is required from

Defendant Diaz. To the extent a response to the allegations set forth in paragraph 205 is required, Defendant Diaz denies the allegations.

206. Neither admitted nor denied. The allegations contained in paragraph 206 set forth legal conclusions to which no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, Defendant Diaz denies the allegations.

207. Neither admitted nor denied to the extent that paragraph 207 purports to describe the FTC Act and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 207 is required, Defendant Diaz denies the allegations.

COUNT I – Deceptive Representations

208. (A – D) Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 208 (and all subparts thereto, including A –D) and therefore denies.

209. (A – D) Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 209 (and all subparts thereto, including A –D) and therefore denies.

210. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 210 and therefore denies.

COUNT II – Unfair Billing Practices

211. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 211 and therefore denies.

212. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 212 and therefore denies.

213. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 213 and therefore denies.

VIOLATIONS OF THE TELEMARKETING SALES RULE

214. Neither admitted nor denied. The allegations contained in paragraph 214 set forth legal conclusions to which no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, Defendant Diaz denies the allegations.

215. Neither admitted nor denied to the extent that paragraph 215 purports to describe amendments to the TSR and those amendments are the best evidence of their contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 215 is required, Defendant Diaz denies the allegations.

216. Neither admitted nor denied. The allegations contained in paragraph 216 set forth legal conclusions to which no response is required. To the extent that this paragraph alleges any liability or wrongdoing on behalf of Defendant Diaz, Defendant Diaz denies the allegations.

217. Neither admitted nor denied. The allegations contained in paragraph 217 set forth legal conclusions to which no response is required. To the extent a response to the allegations set forth in paragraph 217 is required, Defendant Diaz denies the allegations.

218. Neither admitted nor denied to the extent that paragraph 218 purports to describe the TSR and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 218 is required, Defendant Diaz denies the allegations.

219. Neither admitted nor denied to the extent that paragraph 219 purports to describe the TSR and that act is the best evidence of its contents and no response is required from Defendant

Diaz. To the extent a response to the allegations set forth in paragraph 219 is required, Defendant Diaz denies the allegations.

220. Neither admitted nor denied to the extent that paragraph 220 purports to describe the TSR and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 220 is required, Defendant Diaz denies the allegations.

221. Neither admitted nor denied to the extent that paragraph 221 purports to describe the TSR and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 221 is required, Defendant Diaz denies the allegations.

222. Neither admitted nor denied to the extent that paragraph 222 purports to describe the Telemarketing Act and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 222 is required, Defendant Diaz denies the allegations.

223. Neither admitted nor denied to the extent that paragraph 223 purports to describe the TSR and that act is the best evidence of its contents and no response is required from Defendant Diaz. To the extent a response to the allegations set forth in paragraph 223 is required, Defendant Diaz denies the allegations.

COUNT III – Initiating or Causing the Initiation of Unlawful Prerecorded Messages

224. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 224 and therefore denies.

225. Neither admitted nor denied. The allegations contained in paragraph 225 set forth legal conclusions to which no response is required. To the extent a response to the allegations set forth in paragraph 225 is required, Defendant Diaz denies the allegations.

COUNT IV – Calls to Persons Registered on the National Do Not Call Registry

226. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 226 and therefore denies.

227. Neither admitted nor denied. The allegations contained in paragraph 227 set forth legal conclusions to which no response is required. To the extent a response to the allegations set forth in paragraph 227 is required, Defendant Diaz denies the allegations.

COUNT V – Relief Defendants

228. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 228 and therefore denies.

229. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 229 and therefore denies.

230. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 230 and therefore denies.

CONSUMER INJURY

231. Defendant Diaz is without sufficient information to either admit or deny the allegations contained in paragraph 231 and therefore denies.

THIS COURT’S POWER TO GRANT RELIEF

232. Neither admitted nor denied. The allegations contained in paragraph 232 set forth legal conclusions to which no response is required. To the extent that this paragraph alleges any

liability or wrongdoing on behalf of Defendant Diaz, he is without sufficient information to either admit or deny those allegations and therefore denies.

Defendant Diaz denies Plaintiff FTC is entitled to judgement or any of the relief requested by Plaintiff FTC in the Complaint, including, under its “Prayer for Relief” (and all subparts thereto, including A – E).

AFFIRMATIVE DEFENSES

FIRST DEFENSE

Defendant Diaz affirmatively pleads that the First Amended Complaint fails to state a claim upon which relief can be granted under Section 5 of the FTC Act, 15 U.S.C. § 45. The FTC has not demonstrated (and cannot demonstrate) that Defendant Diaz exerted the requisite control (or authority to control) over the Corporate Defendants, directly participated in the alleged wrongful acts, had knowledge of the alleged fraudulent conduct, and/or had and has responsibility to be individually liable.

SECOND DEFENSE

Defendant Diaz affirmatively pleads that there is no danger of recurrence of alleged similar violations, and the FTC’s requested relief is not reasonably related to Defendant Diaz’s alleged violations. The FTC must demonstrate that a “cognizable danger of current violation” exists before an injunction may issue, and there is insufficient evidence that such danger exists.

THIRD DEFENSE

Defendant Diaz affirmatively pleads that the FTC’s allegations are predicated on arbitrary and capricious regulatory policies that are not based on substantial evidence. The FTC has no legal basis to conclude that Defendant Diaz is individually liable for the allegations set forth in the Complaint.

FOURTH DEFENSE

Defendant Diaz affirmatively pleads that the First Amended Complaint fails to state a claim upon which relief can be granted under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. § 6105 and/or the FTC's Telemarketing Sales Rule, 16 C.F.R. Part 310. The FTC has not demonstrated (and cannot demonstrate) that Defendant Diaz is a "seller" or "telemarketer" as defined by those acts, that Defendant Diaz either provided substantial assistance or knew or consciously avoided knowing that the person to whom substantial assistance was given is or was engaged in telemarketing violations, and/or that Defendant Diaz had the culpable state of mind to be liable under those acts.

FIFTH DEFENSE

Defendant Diaz affirmatively pleads that the conduct alleged in the First Amended Complaint is expressly exempted by 16 C.F.R. Part 310.6 as calls between a telemarketer and any business to induce the purchase of goods or services.

SIXTH DEFENSE

Defendant Diaz affirmatively pleads that the conduct alleged in the First Amended Complaint is exempt with respect to calls made to consumers because there was either an existing business relationship and/or express written consent for such calls.

SEVENTH DEFENSE

Defendant Diaz affirmatively pleads that he has acted in good faith to comply with the FTC Act.

EIGHTH DEFENSE

Defendant Diaz affirmatively pleads any additional defenses identified through discovery or at trial.

Dated: August 9, 2018

Respectfully submitted,

By: /s/ Chad J. Gottlieb

Chad J. Gottlieb

Florida Bar No. 64838

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on **August 9, 2018** a true and correct copy of the foregoing was electronically filed with the Clerk using the CM/ECF filing system, and the foregoing will either be served via an electronic copy through CM/ECF or email to all counsel of record and registered parties as set forth on the Service List below.

By: /s/ Chad J. Gottlieb

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