

HONORABLE JAMES L. ROBERT

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

MONTY J. BOOTH, ATTORNEY AT LAW,
P.S., a Washington corporation, RICARDO T.
MASCARENAS, a Washington resident, and
CHRISTOPHER GREGORY, a Washington
resident, individually and on behalf of all
others similarly situated,

Plaintiffs,

vs.

APPSTACK, INC., a Delaware corporation;
STEVE ESPINOSA, individually; and JOHN
ZDANOWSKI, individually,

Defendants.

NO. 2:13-cv-01533-JLR

**DEFENDANTS APPSTACK, INC.,
STEVE ESPINOSA, and JOHN
ZDANOWSKI'S ANSWER AND
AFFIRMATIVE DEFENSES TO
PLAINTIFFS' SECOND AMENDED
CLASS ACTION COMPLAINT**

For their Answer to Plaintiffs' Second Amended Class Action Complaint, Defendants Appstack, Inc. ("Appstack"), Steve Espinosa ("Espinosa"), and John Zdanowski ("Zdanowski") (collectively "Defendants") admit, deny, and allege as follows:

1.

In response to Paragraph 1.1, Defendants admit that Plaintiffs purport to bring an action for damages and equitable relief and that Plaintiffs' Second Amended Class Action Complaint purports to bring claims for violation of the Washington Automatic Dialing and Announcing Device Statute, RCW 80.36.400, the Washington Consumer Protection Act, RCW 19.86 *et seq.*, and the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* Defendants deny that this

1 action is appropriate for class treatment and deny the remaining allegations contained in
2 Plaintiffs' Second Amended Class Action Complaint Paragraph 1.1.

3 2.

4 In response to Paragraph 2.1, Defendants admit this Court has jurisdiction over Plaintiffs'
5 claims. Defendants further admit they did business in Washington State. Defendants deny that
6 this action is appropriate for class treatment and deny the remaining allegations contained in
7 Plaintiffs' Second Amended Class Action Complaint Paragraph 2.1.

8 3.

9 In response to Paragraph 2.2, Defendants admit venue is proper in this District.
10 Defendants further admit they did business in Washington State. Defendants deny that this
11 action is appropriate for class treatment and deny the remaining allegations contained in
12 Plaintiffs' Second Amended Class Action Complaint Paragraph 2.2.

13 4.

14 In response to Paragraph 3.1, Defendants lack knowledge or information sufficient to
15 admit or deny the allegations.

16 5.

17 In response to Paragraph 3.2, Defendants lack knowledge or information sufficient to
18 admit or deny the allegations.

19 6.

20 In response to Paragraph 3.3, Defendants lack knowledge or information sufficient to
21 admit or deny the allegations.

22 7.

23 In response to Paragraph 3.4, Appstack admits it is a Delaware limited liability company
24 with its principal place of business in Temecula, California.

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1 8.

2 In response to Paragraph 3.5, Espinosa admits he is a co-founder of Appstack. Espinosa
3 further admits that, for a period of time, he served as Appstack's Chief Executive Officer.
4 Espinosa further admits he is a "person" as defined by 47 U.S.C. § 153(39). Espinosa denies the
5 remaining allegations in Plaintiffs' Second Amended Class Action Complaint.

6 9.

7 In response to Paragraph 3.6, Zdanowski admits he is a co-founder of Appstack.
8 Zdanowski further admits that, for a period of time, he served part-time as Appstack's Chief
9 Financial Officer. Zdanowski further admits he is a "person" as defined by 47 U.S.C. § 153(39).
10 Zdanowski denies the remaining allegations in Plaintiffs' Second Amended Class Action
11 Complaint.

12 10.

13 In response to Paragraph 4.1, Defendants admit RCW 80.36.400 is a statute enacted in
14 Washington State and the language speaks for itself. To the extent a response is required,
15 Defendants deny the allegations contained in Plaintiffs' Second Amended Class Action
16 Complaint Paragraph 4.1.

17 11.

18 In response to Paragraph 4.2, Defendants admit RCW 80.36.400 is a statute enacted in
19 Washington State and its language speaks for itself. Paragraph 4.2 sets forth legal conclusions to
20 which no response is required. To the extent a response is required, Defendants deny the
21 allegations contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 4.2.

22 12.

23 In response to Paragraph 4.3, Defendants admit RCW 19.86 *et seq.* is a statute enacted in
24 Washington State and its language speaks for itself. Defendants further admit RCW 80.36.400 is
25 a statute enacted in Washington State and its language speaks for itself. Paragraph 4.3 sets forth
26 legal conclusions to which no response is required. To the extent a response is required,

1 Defendants deny the allegations contained in Plaintiffs' Second Amended Class Action
2 Complaint Paragraph 4.3.

3 13.

4 In response to Paragraph 5.1, Defendants admit the Telephone Consumer Protection Act
5 ("TCPA") is a statute enacted in the United States and the language speaks for itself. Paragraph
6 5.1 sets forth legal conclusions to which no response is required. To the extent a response is
7 required, Defendants deny the allegations contained in Plaintiffs' Second Amended Class Action
8 Complaint Paragraph 5.1.

9 14.

10 In response to Paragraph 5.2, Defendants admit the TCPA is a statute enacted in the
11 United States and the language speaks for itself. Paragraph 5.2 sets forth legal conclusions to
12 which no response is required. To the extent a response is required, Defendants deny the
13 allegations contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 5.2.

14 15:

15 In response to Paragraph 5.3, Defendants admit the TCPA is a statute enacted in the
16 United States and the language speaks for itself. Paragraph 5.3 sets forth legal conclusions to
17 which no response is required. To the extent a response is required, Defendants deny the
18 allegations contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 5.3.

19 16.

20 In response to Paragraph 5.4, it sets forth legal conclusions to which no response is
21 required. To the extent a response is required, Defendants deny the allegations contained in
22 Plaintiffs' Second Amended Class Action Complaint Paragraph 5.4.

23 17.

24 Appstack admits the allegations contained in Plaintiffs' Second Amended Class Action
25 Complaint Paragraph 6.1.

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1 18.

2 In response to Paragraph 6.2, Defendants admit for a period of time engaging in
3 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
4 using a telephone dialing system has been discontinued. Paragraph 6.2 sets forth legal
5 conclusions to which no response is required. Defendants deny the remaining allegations
6 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.2.

7 19.

8 In response to Paragraph 6.3, Defendants admit for a period of time engaging in
9 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
10 using a telephone dialing system has been discontinued. Defendants deny the remaining
11 allegations contained in Plaintiff's Amended Class Action Complaint Paragraph 6.3.

12 20.

13 In response to Paragraph 6.4, Defendants admit for a period of time engaging in
14 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
15 using a telephone dialing system has been discontinued. Paragraph 6.4 sets forth legal
16 conclusions to which no response is required. Defendants deny the remaining allegations
17 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.4.

18 21.

19 In response to Paragraph 6.5, Defendants admit for a period of time engaging in
20 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
21 using a telephone dialing system has been discontinued. Paragraph 6.5 sets forth legal
22 conclusions to which no response is required. Defendants deny the remaining allegations
23 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.5.

24 22.

25 Plaintiffs' Second Amended Class Action Complaint Paragraph 6.6 sets forth legal
26 conclusions which do not require a response. To the extent a response is required, Defendants

1 deny the allegations contained in Plaintiffs' Second Amended Class Action Complaint Paragraph
2 5.6.

3 23.

4 In response to Paragraph 6.7, Defendants admit for a period of time engaging in
5 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
6 using a telephone dialing system has been discontinued. Paragraph 6.7 sets forth legal
7 conclusions to which no response is required. Defendants deny the remaining allegations
8 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.7.

9 24.

10 In response to Paragraph 6.8, Defendants admit for a period of time engaging in
11 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
12 using a telephone dialing system has been discontinued. Paragraph 6.8 sets forth legal
13 conclusions to which no response is required. Defendants deny the remaining allegations
14 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.8.

15 25.

16 In response to Paragraph 6.9, Defendants admit for a period of time engaging in
17 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
18 using a telephone dialing system has been discontinued. Paragraph 6.9 sets forth legal
19 conclusions to which no response is required. Defendants deny the remaining allegations
20 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.9.

21 26.

22 In response to Paragraph 6.10, Defendants lack knowledge or information sufficient to
23 admit or deny the allegations.

24 27.

25 In response to Paragraph 6.11, Defendants lack knowledge or information sufficient to
26 admit or deny the allegations.

1 28.

2 In response to Paragraph 6.12, Defendants lack knowledge or information sufficient to
3 admit or deny the allegations.

4 29.

5 In response to Paragraph 6.13, Defendants admit for a period of time engaging in
6 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
7 using a telephone dialing system has been discontinued. Paragraph 6.13 sets forth legal
8 conclusions to which no response is required. Defendants deny the remaining allegations
9 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.13.

10 30.

11 In response to Paragraph 6.14, Defendants admit for a period of time engaging in
12 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
13 using a telephone dialing system has been discontinued. Paragraph 6.14 sets forth legal
14 conclusions to which no response is required. Defendants deny the remaining allegations
15 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.14.

16 31.

17 In response to Paragraph 6.15, Defendants admit for a period of time engaging in
18 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
19 using a telephone dialing system has been discontinued. Paragraph 6.15 sets forth legal
20 conclusions to which no response is required. Defendants deny the remaining allegations
21 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.15.

22 32.

23 In response to Paragraph 6.16, Defendants admit for a period of time engaging in
24 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
25 using a telephone dialing system has been discontinued. Paragraph 6.16 sets forth legal
26 conclusions to which no response is required. Defendants deny the remaining allegations

1 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.16.

2 33.

3 In response to Paragraph 6.17, Defendants admit for a period of time engaging in
4 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
5 using a telephone dialing system has been discontinued. Paragraph 6.17 sets forth legal
6 conclusions to which no response is required. Defendants deny the remaining allegations
7 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.17.

8 34.

9 In response to Paragraph 6.18, Defendants admit for a period of time engaging in
10 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
11 using a telephone dialing system has been discontinued. Paragraph 6.18 sets forth legal
12 conclusions to which no response is required. Defendants deny the remaining allegations
13 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.18.

14 35.

15 In response to Paragraph 6.19, Defendants lack knowledge or information sufficient to
16 admit or deny the allegations.

17 36.

18 In response to Paragraph 6.20, Defendants lack knowledge or information sufficient to
19 admit or deny the allegations.

20 37.

21 In response to Paragraph 6.21, Defendants lack knowledge or information sufficient to
22 admit or deny the allegations.

23 38.

24 In response to Paragraph 6.22, Defendants admit for a period of time engaging in
25 telemarketing using a telephone dialing system. Defendants further admit use of telemarketing
26 using a telephone dialing system has been discontinued. Paragraph 6.22 sets forth legal

1 conclusions to which no response is required. Defendants deny the remaining allegations
2 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 6.22.

3 39.

4 In response to Paragraph 6.23 (erroneously listed as Paragraph 6.14), Defendants admit
5 for a period of time engaging in telemarketing using a telephone dialing system. Defendants
6 further admit use of telemarketing using a telephone dialing system has been discontinued.
7 Paragraph 6.23 sets forth legal conclusions to which no response is required. Defendants deny
8 the remaining allegations contained in Plaintiffs' Second Amended Class Action Complaint
9 Paragraph 6.23.

10 40.

11 In response to Paragraph 6.24 (erroneously listed as Paragraph 6.15), Defendants admit
12 for a period of time engaging in telemarketing using a telephone dialing system. Defendants
13 further admit use of telemarketing using a telephone dialing system has been discontinued.
14 Paragraph 6.24 sets forth legal conclusions to which no response is required. Defendants deny
15 the remaining allegations contained in Plaintiffs' Second Amended Class Action Complaint
16 Paragraph 6.24.

17 41.

18 In response to Paragraph 7.1, Defendants admit Plaintiffs purport to bring this action on
19 behalf of the following classes of persons defined as:

20 Washington State Class: All Washington businesses who received one or more
21 telephone calls made by Defendants and/or made on Defendants' behalf using an
22 automatic dialing and announcing device, when such a call included a pre-
23 recorded message containing a commercial solicitation and was transmitted to a
24 telephone number with a Washington State area code at any time for the period
25 that begins four years from the date of this Complaint to trial.

26 Cell Phone Class: All persons or entities in the United States who, on or after
four years before the filing of this action, received a call on their cellular
telephone line with a pre-recorded message, made on or behalf of Defendants, and
without the recipient's express prior consent.

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1 Defendants further admit that excluded from the purported class are Defendants, any
2 entities in which Defendants have a controlling interest or that have a controlling interest in
3 Defendants, and Defendants' legal representatives, assignees and successors, and the judge to
4 whom this case is assigned and any member of the judge's immediate family and staff.
5 Defendants deny this action is appropriate for class treatment and deny the remaining allegations
6 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 7.1.

7 42.

8 In response to Paragraph 7.2, Defendants deny this action is appropriate for class
9 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
10 Complaint Paragraph 7.2.

11 43.

12 In response to Paragraph 7.3, Defendants deny this action is appropriate for class
13 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
14 Complaint Paragraph 7.3, including without limitation its subparagraphs A-G.

15 44.

16 In response to Paragraph 7.4, Defendants deny this action is appropriate for class
17 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
18 Complaint Paragraph 7.4.

19 45.

20 In response to Paragraph 7.5, Defendants deny this action is appropriate for class
21 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
22 Complaint Paragraph 7.5.

23 46.

24 In response to Paragraph 7.6, Defendants deny this action is appropriate for class
25 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
26 Complaint Paragraph 7.6.

1 47.

2 In response to Paragraph 7.7, Defendants deny this action is appropriate for class
3 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
4 Complaint Paragraph 7.7.

5 48.

6 In response to Paragraph 7.8 (erroneously listed as 6.8), Defendants admit for a period of
7 time engaging in telemarketing using an automatic telephone dialing system. Defendants further
8 admit use of telemarketing using an automatic telephone dialing system has been discontinued.
9 Defendants deny this action is appropriate for class treatment and deny the remaining allegations
10 contained in Plaintiffs' Second Amended Class Action Complaint Paragraph 7.8.

11 49.

12 Paragraph 8.1 is a re-allegation and as such, Defendants re-allege and incorporate their
13 specific responses to Plaintiffs' Second Amended Class Action Complaint Paragraphs 1.1-7.8.

14 50.

15 In response to Paragraph 8.2, Defendants deny this action is appropriate for class
16 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
17 Complaint Paragraph 8.2.

18 51.

19 In response to Paragraph 8.3, Defendants deny this action is appropriate for class
20 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
21 Complaint Paragraph 8.3.

22 52.

23 Paragraph 9.1 is a re-allegation and as such, Defendants re-allege and incorporate their
24 specific responses to Plaintiffs' Second Amended Class Action Complaint Paragraphs 1.1-8.3.

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1 53.

2 In response to Paragraph 9.2, Defendants deny this action is appropriate for class
3 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
4 Complaint Paragraph 9.2.

5 54.

6 In response to Paragraph 9.3, Defendants deny this action is appropriate for class
7 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
8 Complaint Paragraph 9.3.

9 55.

10 In response to Paragraph 9.4, Defendants deny this action is appropriate for class
11 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
12 Complaint Paragraph 9.4.

13 56.

14 Paragraph 10.1 is a re-allegation and as such, Defendants re-allege and incorporate their
15 specific responses to Plaintiffs' Second Amended Class Action Complaint Paragraphs 1.1-9.4.

16 57.

17 In response to Paragraph 10.2, Defendants deny this action is appropriate for class
18 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
19 Complaint Paragraph 10.2.

20 58.

21 In response to Paragraph 10.3, Defendants deny this action is appropriate for class
22 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
23 Complaint Paragraph 10.3.

24 59.

25 In response to Paragraph 10.4, Defendants deny this action is appropriate for class
26 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action

1 Complaint Paragraph 10.4.

2 60.

3 Paragraph 11.1 is a re-allegation and as such, Defendants re-allege and incorporate their
4 specific responses to Plaintiffs' Second Amended Class Action Complaint Paragraphs 1.1-10.4.

5 61.

6 In response to Paragraph 11.2, Defendants deny this action is appropriate for class
7 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
8 Complaint Paragraph 11.2.

9 62.

10 In response to Paragraph 11.3, Defendants deny this action is appropriate for class
11 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
12 Complaint Paragraph 11.3.

13 63.

14 In response to Paragraph 11.4, Defendants deny this action is appropriate for class
15 treatment and deny the allegations contained in Plaintiffs' Second Amended Class Action
16 Complaint Paragraph 11.4.

17 64.

18 Except as expressly admitted, Defendants deny each and every remaining allegation
19 contained in Plaintiffs' Second Amended Class Action Complaint and the whole thereof and
20 further deny that Plaintiffs and the purported classes are entitled to any of the relief requested
21 therein.

22 **FIRST AFFIRMATIVE DEFENSE**

23 65.

24 (Failure to State a Claim)

25 Plaintiffs' claims for relief fail to state a claim upon which relief may be granted,
26 including under the true facts and circumstances then and there existing.

SECOND AFFIRMATIVE DEFENSE

66.

(Class Certification Should Be Denied)

Class certification of this action should be denied for one or more of the following reasons:

- a. Joinder of all members of the putative classes is not impracticable;
- b. There are insufficient questions of law and fact pertaining to the whole of the putative classes;
- c. The claims of the named Plaintiffs, if meritorious, are not typical of the putative classes;
- d. The claims of the named Plaintiffs will not adequately protect the interests of the putative classes;
- e. A class action is not the appropriate or superior method for the fair and efficient adjudication of this controversy;
- f. It is not impractical for individual plaintiffs to obtain redress;
- g. Individual issues will predominate over class issues.

THIRD AFFIRMATIVE DEFENSE

67.

(Failure to Exhaust)

Plaintiffs' claims are barred in whole or in part by their failure to exhaust available administrative remedies.

FOURTH AFFIRMATIVE DEFENSE

68.

(Failure to Mitigate)

Plaintiffs' claims are barred in whole or in part by their failure to mitigate damages.

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FIFTH AFFIRMATIVE DEFENSE

69.

(Statute of Limitations)

Plaintiffs' claims and the claims of the putative classes, if any, have not been brought within the appropriate statute of limitations and/or statute of ultimate repose.

SIXTH AFFIRMATIVE DEFENSE

70.

(Consent/Plaintiffs *In Pari Delicto*)

Plaintiffs' claims are barred in whole or in part because their own actions or omissions were the sole, proximate, and legal cause of any injuries or damage Plaintiffs allegedly suffered. Plaintiffs' alleged injuries, if any, were not caused by the actions of Defendants.

SEVENTH AFFIRMATIVE DEFENSE

71.

(No Damage, Injury, or Ascertainable Loss)

Plaintiffs' claims are barred in whole or in part because Plaintiffs and the purported classes did not suffer any injury, damage, or ascertainable loss as a result of any purported actions by Defendants.

EIGHTH AFFIRMATIVE DEFENSE

72.

(Laches)

Plaintiffs' claims are barred in whole or in part because Plaintiffs have failed to act promptly in bringing forth the instant action. Such delay has unfairly impaired Defendants' abilities to defend against this action because witnesses or evidence needed to defend against Plaintiffs' claims may have become unavailable or lost.

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1 **NINTH AFFIRMATIVE DEFENSE**

2 73.

3 (Acts or Omissions of Others)

4 Plaintiffs' claims are barred in whole or in part because any loss, damage, actual injury,
5 or detriment Plaintiffs allege they and the putative classes suffered was proximately caused by
6 the acts or omissions of persons other than Defendants and over whom Defendants had no
7 control; however, in the unlikely event a trier of fact finds that Defendants are liable to Plaintiffs
8 for any loss, damage, actual injury, or detriment, Defendants are entitled to indemnity from those
9 other persons in direct proportion to their respective fault.

10 **TENTH AFFIRMATIVE DEFENSE**

11 74.

12 (Third-Party Negligence)

13 Defendants deny the damages claimed by Plaintiffs and the putative classes. However, to
14 the extent Plaintiffs' alleged damages arise from this cause of action(s), they were solely or
15 substantially caused by the fault of parties over whom Defendants had no control.

16 **ELEVENTH AFFIRMATIVE DEFENSE**

17 75.

18 (Comparative Fault)

19 Plaintiffs' damages arising from this cause of action(s), if any, were solely or
20 substantially caused by Plaintiffs' own negligence or fault.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 76.

23 (Additional Defenses)

24 Defendants reserve the right to allege additional affirmative defenses as discovery
25 unfolds.

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WHEREFORE Defendants pray for judgment against Plaintiffs as follows:

1. Ordering Plaintiffs and the putative classes take nothing by the Second Amended Class Action Complaint;
2. Awarding Defendants their costs, disbursements, and reasonable attorney fees;
3. Providing other such relief as the Court deems just and equitable.

Dated this 13th day of January, 2015.

SMITH FREED & EBERHARD, PC

By: s/ Gavin Gruber
 Anne Cohen, WSB #41183
 Email: acohen@smithfreed.com
 Gavin Gruber,
Admitted Pro Hac Vice
 Email: ggruber@smithfreed.com
 Of Attorneys for Defendants
 Appstack, Inc., Steve Espinosa and
 John Zdanowski

Trial Attorney: Anne Cohen, WSB # 41183

CERTIFICATE OF SERVICE

I hereby certify that on January 13, 2015, I served **DEFENDANTS APPSTACK, INC., STEVE ESPINOSA, and JOHN ZDANOWSKI'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT** on:

Via ECF Filing

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Co-Counsel for Plaintiff

_____ by mailing to each of the foregoing a copy thereof, placed in a sealed envelope addressed as listed above and deposited in the United States mail at Portland, Oregon, and that postage thereon was fully prepaid.

_____ by facsimile transmission to each of the foregoing of a copy thereof to the number shown above.

X _____ by electronic means through the Court's Case Management/Electronic Case File system on the date set forth above.

Dated this 13th day of January, 2015.

SMITH FREED & EBERHARD, PC

By: /s/ Gavin Gruber
Anne Cohen, WSB # 41183
Email: acohen@smithfreed.com
Gavin Gruber, *Admitted Pro Hac Vice*
Email: ggruber@smithfreed.com
Of Attorneys for Defendants
Appstack, Inc., Steve Espinosa and
John Zdanowski