

1 John G. Kerkorian (012224)
kerkorianj@ballardspahr.com
2 Michael DiGiacomo (032251)
digiacomom@ballardspahr.com
3 BALLARD SPAHR LLP
4 1 East Washington Street, Suite 2300
5 Phoenix, AZ 85004-2555
Telephone: 602.798.5400
6 Facsimile: 602.798.5595

7 *Attorneys for Defendant*
8 *Citibank, N.A.*

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE DISTRICT OF ARIZONA

11 Christine Head, *on behalf of herself and*
12 *others similarly situated,*

13 Plaintiff,

14 vs.

15 Citibank, N.A.,

16 Defendant.
17

NO. 3:18-CV-08189-ROS

**ANSWER OF CITIBANK, N.A. TO
THIRD AMENDED CLASS ACTION
COMPLAINT**

18 Defendant Citibank, N.A. (“Citibank”), by and through its undersigned counsel,
19 submits this Answer to the Third Amended Complaint filed by Plaintiff Christine Head
20 (“Plaintiff”).

21 **Nature of this Action**

22 1. Christine Head (“Plaintiff”) brings this class action against Citibank, N.A.
23 (“Citibank” or “Defendant”), under the Telephone Consumer Protection Act (“TCPA”), 47
24 U.S.C. § 227, *et seq.*

25 **ANSWER:** Paragraph 1 contains no factual allegations to which a response is
26 required. To the extent a response is required, denied. Citibank further denies any
27 allegation or implication that Plaintiff’s allegations have merit or Plaintiff and/or anyone
28 she purports to represent in this action are entitled to any relief whatsoever.

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400

2. Section 227(b)(1)(A)(iii) of the TCPA provides, in pertinent part:

It shall be unlawful for any person within the United States, or any person outside of the United States if the recipient is within the United States—

(A) to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using . . . an artificial or prerecorded voice—

* * *

(iii) to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier service, or any service for which the called party is charged for the call[.]

ANSWER: Paragraph 2 contains no factual allegations to which a response is required, and the cited statute speaks for itself. To the extent a response is required, denied. Citibank further denies any allegation or implication that the Plaintiff’s allegations have merit or that Plaintiff and/or anyone she purports to represent in this action are entitled to any relief whatsoever.

3. Upon information and good faith belief, Citibank routinely violates 47 U.S.C. § 227(b)(1)(A)(iii) by placing calls using an artificial or prerecorded voice to telephone numbers assigned to a cellular telephone service, without prior express consent, in that it calls wrong or reassigned telephone numbers not assigned to its current or former customers or authorized users.

ANSWER: Answering Paragraph 3, denied as a conclusion of law to which no response is required. To the extent a response is required, Citibank denies the allegations.

Jurisdiction and Venue

4. This Court has subject matter jurisdiction under 47 U.S.C. § 227(b)(3) and 28 U.S.C. § 1331.

ANSWER: Answering Paragraph 4, Citibank does not challenge jurisdiction for purposes of this action only but denies that Citibank has any liability to Plaintiff or anyone she purports to represent in this action. Citibank further states that, to the extent Plaintiff

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400

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1 purports to represent Citibank credit card customers or authorized users as part of any
2 putative class, the claims of such putative class members are subject to arbitration on an
3 individual, non-class basis pursuant to the arbitration agreement contained in the terms and
4 conditions governing the class members' account(s) with Citibank. By way of example,
5 Viann Bonoan was previously named as a class representative in this case. Her individual
6 claims were subject to arbitration because she is an authorized user on a Citibank
7 Simplicity MasterCard account currently ending in 7404 issued on or about December 11,
8 2011 (the "Account") to Oscar Garcia ("Garcia"). The Account is subject to written terms
9 and conditions that are reflected in a Card Agreement, as amended from time to time. The
10 Card Agreement includes an arbitration agreement, requiring that the claims asserted by
11 Bonoan must be arbitrated on an individual, non-class basis (the "Arbitration Agreement").
12 Citibank moved to compel arbitration of Bonoan's claims, and Bonoan recognized that she
13 was obligated to arbitrate and stipulated to arbitration. In filing this Answer, Citibank does
14 not waive, and expressly reserves, all arguments pertaining to the Arbitration Agreement
15 and/or arbitration agreements applicable to putative class members and/or Citibank's right
16 to compel individual arbitration of putative card member's claims.

17 5. Venue is proper before this Court pursuant to 28 U.S.C. § 1391(b) as a
18 portion of the events giving rise to this action occurred in this district, and as Citibank
19 transacts business in this district.

20 **ANSWER:** Answering Paragraph 5, Citibank does not challenge venue for
21 purposes of this action only but denies that Citibank has any liability to Plaintiff or anyone
22 she purports to represent in this action. Citibank further states that, to the extent Plaintiff
23 purports to represent Citibank credit card customers or authorized users as part of any
24 putative class, all claims asserted by a putative class members that are Citibank credit card
25 customers must be arbitrated on an individual, non-class basis.

26 ///

27 ///

28 ///

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Parties

1
2 6. Plaintiff Christine Head is a natural person who at all relevant times resided
3 in Kingman, Arizona.

4 **ANSWER:** Answering Paragraph 6, Citibank lacks knowledge or information at
5 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
6 on that basis, denies the allegations. By way of further answer, Citibank admits only that
7 Plaintiff testified that she resided in Kingman, Arizona during the time period relevant to
8 her complaint.

9 7. Citibank is a wholly owned subsidiary of Citigroup Inc., which is publicly
10 traded.

11 **ANSWER:** Answering Paragraph 7, Citigroup Inc. is a Delaware corporation with
12 its principal offices located in New York. Citibank, N.A. is a wholly owned subsidiary of
13 Citicorp LLC, which in turn is a wholly-owned subsidiary of Citigroup Inc., a publicly
14 traded corporation.

15 8. Citibank is a National Bank, FDIC Certificate Number 7213, with its
16 principal place of business in New York, New York.

17 **ANSWER:** Answering Paragraph 8, Citibank, N.A. is a national bank located in
18 Sioux Falls, South Dakota. Except as stated, Citibank denies the allegations of this
19 paragraph.

20 9. Citibank’s principal offerings include: consumer finance, mortgage lending
21 and retail banking (including commercial banking) products and services, investment
22 banking, cash management and trade finance; and private banking products and services.

23 **ANSWER:** Answering Paragraph 9, Citibank states that, among other things,
24 Citibank offers credit to consumers, including credit cards. Except as stated, Citibank
25 denies the allegations of this paragraph.

The TCPA

26
27 10. In 1991, Congress enacted the TCPA in response to a growing number of
28 consumer complaints regarding certain telemarketing practices.

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1 **ANSWER:** Paragraph 10 contains no factual allegations to which a response is
2 required. To the extent a response is required, denied. Citibank further denies any
3 allegation or implication that Plaintiff’s allegations have merit or that Plaintiff and/or
4 anyone she purports to represent in this action are entitled to any relief whatsoever.

5 11. According to findings by the FCC, the agency Congress vested with authority
6 to issue regulations implementing the TCPA, prerecorded calls are prohibited because, as
7 Congress found, such calls are a greater nuisance and invasion of privacy than live calls,
8 and they can be costly and inconvenient.

9 **ANSWER:** Paragraph 11 contains no factual allegations to which a response is
10 required. To the extent a response is required, denied. Citibank further denies any
11 allegation or implication that Plaintiff’s allegations have merit or that Plaintiff and/or
12 anyone she purports to represent in this action are entitled to any relief whatsoever.

13 12. The FCC also recognized that wireless customers are charged for incoming
14 calls whether they pay in advance or after the minutes are used.¹

15 **ANSWER:** Paragraph 12 contains no factual allegations to which a response is
16 required. To the extent a response is required, denied. Citibank further denies any
17 allegation or implication that Plaintiff’s allegations have merit or that Plaintiff and/or
18 anyone she purports to represent in this action are entitled to any relief whatsoever.

19 13. On January 4, 2008 the FCC released a Declaratory Ruling wherein it
20 confirmed that autodialed and/or prerecorded message calls to a wireless number are
21 permitted only if the calls are made with the “prior express consent” of the called party.²

22 **ANSWER:** Paragraph 13 contains no factual allegations to which a response is
23 required. To the extent a response is required, denied. Citibank further denies any
24 allegation or implication that Plaintiff’s allegations have merit or that Plaintiff and/or
25 anyone she purports to represent in this action are entitled to any relief whatsoever.

26 _____
27 ¹ *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-28, Report and
28 Order, 18 FCC Rcd 14014, 14115 (¶165) (2003).
² *In re Rules and Regulations Implementing the TCPA*, CG Docket No. 02-278,
Declaratory Ruling, 23 FCC Rcd 559, 564-65 (¶ 10) (2008).

Factual Allegations

1
2 14. Beginning in or around October 2017, Citibank placed a number of calls to
3 cellular telephone number (928)-XXX-0023.

4 **ANSWER:** Answering Paragraph 14, Citibank admits only that it placed calls to a
5 telephone number ending in 0023 that was provided to it by a customer in connection with
6 the customer’s Citibank credit card account. Except as otherwise stated, Citibank denies
7 the allegations of this paragraph.

8 15. In total, Citibank placed more than 100 calls to cellular telephone number
9 (928)-XXX-0023.

10 **ANSWER:** Answering Paragraph 15, Citibank admits only that it placed calls to a
11 telephone number ending in 0023. Except as otherwise stated, Citibank denies the
12 allegations of this paragraph.

13 16. During the time Citibank placed its calls to (928)-XXX-0023, Plaintiff was
14 the only customary user of her (928)-XXX-0023 telephone number.

15 **ANSWER:** Answering Paragraph 16, Citibank lacks knowledge or information at
16 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
17 on that basis, denies the allegations.

18 17. In connection with its calls to telephone number (928)-XXX-0023 from
19 October-December 2017, Citibank left 23 prerecorded voice messages on the cellular
20 telephone voicemail associated with (928)-XXX-0023.

21 **ANSWER:** Answering Paragraph 17 Citibank lacks knowledge or information at
22 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
23 on that basis, denies the allegations.

24 18. Plaintiff answered several of Citibank’s calls to her (928)-XXX-0023 cellular
25 telephone number.

26 **ANSWER:** Answering Paragraph 18, Citibank lacks knowledge or information at
27 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
28 on that basis, denies the allegations.

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1 19. In connection with each of the calls it placed to Plaintiff's cellular telephone
2 number that she answered, Citibank played an artificial or prerecorded voice message
3 referencing Plaintiff's supposed Home Depot account.

4 **ANSWER:** Answering Paragraph 19, Citibank denies the allegations.

5 20. None of the calls Plaintiff answered from Citibank had a live person on the
6 line; rather, Citibank played a prerecorded voice message after Plaintiff said hello.

7 **ANSWER:** Answering Paragraph 20, Citibank denies the allegations.

8 21. Each of the prerecorded messages would ask Plaintiff to return Citibank's
9 call.

10 **ANSWER:** Answering Paragraph 21, Citibank denies the allegations.

11 22. Citibank is the issuer of Home Depot branded credit cards.

12 **ANSWER:** Answering Paragraph 22, Citibank admits only that Citibank is the
13 issuer of Home Depot branded credit card accounts.

14 23. Citibank made the calls to Plaintiff in an attempt to reach a Home Depot
15 credit card customer.

16 **ANSWER:** Answering Paragraph 23, Citibank admits placing calls to a telephone
17 number ending in 0023 in an effort to reach a customer who provided the telephone number
18 ending in 0023 to Citibank. Except as stated, Citibank denies the allegations of this
19 paragraph.

20 24. Plaintiff does not have, and to her knowledge has never had, any relationship
21 with Citibank.

22 **ANSWER:** Answering Paragraph 24, Citibank has not located an account
23 belonging to the Plaintiff based on its search to date. As to the remaining allegations,
24 Citibank lacks knowledge or information at this time sufficient to form a belief as to the
25 truth of the allegations and, on that basis, denies the allegations.

26 25. Plaintiff also does not have, and never had, a Home Depot account of any
27 kind.

28 **ANSWER:** Answering Paragraph 25, Citibank has not located an account

1 belonging to the Plaintiff based on its search to date. As to the remaining allegations,
2 Citibank lacks knowledge or information at this time sufficient to form a belief as to the
3 truth of the allegations and, on that basis, denies the allegations.

4 26. At no point did Plaintiff provide her telephone number to Citibank or to
5 Home Depot.

6 **ANSWER:** Answering Paragraph 26, Citibank states that a phone number ending
7 in 0023 was provided to Citibank by a customer in connection with the customer's Citibank
8 credit card account. As to the remaining allegations, Citibank lacks knowledge or
9 information at this time sufficient to form a belief as to the truth of the allegations and, on
10 that basis, denies the allegations.

11 27. Plaintiff's cellular number is believed to have been received by Citibank
12 when another individual, "Jack Bingham," opened a new Citibank account using Plaintiff's
13 cellular telephone number on his application.

14 **ANSWER:** Answering Paragraph 27, Citibank admits only that a phone number
15 ending in 0023 was provided to Citibank in connection with a Citibank credit card account
16 related to Jack Bingham. As to the remaining allegations, Citibank lacks knowledge or
17 information at this time sufficient to form a belief as to the truth of the allegations and, on
18 that basis, denies the allegations.

19 28. Plaintiff does not know Jack Bingham and she did not authorize any such
20 person to open an account using her cellular telephone number.

21 **ANSWER:** Answering Paragraph 28, Citibank lacks knowledge or information at
22 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
23 on that basis, denies the allegations.

24 29. Citibank's records show all calls it placed, or caused to be placed, to
25 Plaintiff's cellular telephone number by using an artificial or prerecorded voice.

26 **ANSWER:** Answering Paragraph 29, Citibank denies the allegations. By way of
27 further answer, Citibank's records only show attempted calls that might result in a message.
28

1 30. Each of Citibank's call to Plaintiff's cellular telephone number was
2 accompanied by an artificial or prerecorded voice message.

3 **ANSWER:** Answering Paragraph 30, Citibank denies the allegations.

4 31. No live person was ever on the line when Plaintiff answered Citibank's calls.

5 **ANSWER:** Answering Paragraph 31, Citibank denies the allegations.

6 32. At one point, Plaintiff returned one of Citibank's calls to inform Citibank that
7 it was calling the wrong number.

8 **ANSWER:** Answering Paragraph 32, Citibank lacks knowledge or information at
9 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
10 on that basis, denies the allegations.

11 33. However, Plaintiff was placed on an extended hold and instructed to wait for
12 the next available representative.

13 **ANSWER:** Answering Paragraph 33, Citibank lacks knowledge or information at
14 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
15 on that basis, denies the allegations.

16 34. Frustrated, and knowing that the Home Depot/Citibank account in question
17 was not her account, Plaintiff hung up.

18 **ANSWER:** Answering Paragraph 34, Citibank lacks knowledge or information at
19 this time sufficient to form a belief as to the truth of the allegations in this paragraph and,
20 on that basis, denies the allegations.

21 35. Citibank placed its calls using an artificial or prerecorded voice to Plaintiff's
22 cellular telephone number for non-emergency purposes.

23 **ANSWER:** Answering Paragraph 35, denied as a conclusion of law to which no
24 response is required. To the extent a response is required, Citibank denies the allegations.

25 36. Citibank placed its calls using an artificial or prerecorded voice to Plaintiff's
26 cellular telephone number voluntarily.

27 **ANSWER:** Answering Paragraph 36, denied as a conclusion of law to which no
28 response is required. To the extent a response is required, Citibank denies the allegations.

1 37. Citibank placed the calls to Plaintiff's cellular telephone number using an
2 artificial or prerecorded voice under its own free will.

3 **ANSWER:** Answering Paragraph 37, denied as a conclusion of law to which no
4 response is required. To the extent a response is required, Citibank denies the allegations.

5 38. Citibank had knowledge that it placing calls using an artificial or prerecorded
6 voice to Plaintiff's cellular telephone number.

7 **ANSWER:** Answering Paragraph 38, Citibank denies the allegations.

8 39. Citibank intended to use an artificial or prerecorded voice in connection with
9 calls it placed to Plaintiff's cellular telephone number.

10 **ANSWER:** Answering Paragraph 39, Citibank denies the allegations.

11 40. Plaintiff is not, nor was, one of Citibank's customers.

12 **ANSWER:** Answering Paragraph 40, Citibank lacks knowledge or information at
13 this time sufficient to form a belief as to the truth of the allegations of this paragraph and,
14 on that basis, denies the allegations.

15 41. Plaintiff does not, nor did, have a business relationship with Citibank.

16 **ANSWER:** Answering Paragraph 41, Citibank lacks knowledge or information at
17 this time sufficient to form a belief as to the truth of the allegations of this paragraph and,
18 on that basis, denies the allegations.

19 42. Plaintiff did not give Citibank or Home Depot prior express consent to place
20 calls to her cellular telephone number by using an artificial or prerecorded voice.

21 **ANSWER:** Answering Paragraph 42, denied as a conclusion of law to which no
22 response is required. To the extent a response is required, Citibank lacks knowledge or
23 information at this time sufficient to form a belief as to the truth of the allegations of this
24 paragraph and, on that basis, denies the allegations.

25 43. Plaintiff suffered actual harm as a result Citibank's calls at issue in that she
26 suffered an invasion of privacy, an intrusion into her life, and a private nuisance.

27 **ANSWER:** Answering Paragraph 43, Citibank denies the allegations.
28

1 44. As well, Citibank's calls at issue unnecessarily tied up Plaintiff's cellular
2 telephone line.

3 **ANSWER:** Answering Paragraph 44, Citibank denies the allegations.

4 45. On information and belief, Citibank, as a matter of pattern and practice, uses
5 an artificial or prerecorded voice when placing calls to telephone numbers assigned to a
6 cellular telephone service, absent prior express consent.

7 **ANSWER:** Answering Paragraph 45, Citibank denies the allegations.

8 **Class Action Allegations**

9 46. Plaintiff brings this action under Federal Rule of Civil Procedure 23, and as
10 the representative of the following class:

11 All persons and entities throughout the United States (1) to whom Citibank,
12 N.A. placed a call in connection with a past-due credit card account, (2)
13 directed to a number assigned to a cellular telephone service, but not assigned
14 to a current or former Citibank, N.A. customer or authorized user, (3) via its
15 Aspect dialer and with an artificial or prerecorded voice, (4) from August 15,
2014 through the date of class certification.

16 **ANSWER:** Answering Paragraph 46, Citibank denies that any class should be
17 certified in this action and that this action is appropriate for class treatment. Citibank
18 further states that, to the extent any putative class member is or was a Citibank credit card
19 customer or authorized user, the claims of such putative class members are subject to
20 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
21 in the terms and conditions governing class members' account(s) with Citibank. By way
22 of example, Viann Bonoan was previously named as a class representative in this case.
23 Her individual claims were subject to arbitration because she is an authorized user on a
24 Citibank Simplicity MasterCard account that is subject to written terms and conditions
25 including an arbitration agreement, requiring that the claims asserted by Bonoan be
26 arbitrated on an individual, non-class basis. Bonoan stipulated to arbitration. To the extent
27 a further response is required, Citibank denies the allegations contained therein.

1 47. Excluded from the class are Defendant, Defendant's officers and directors,
2 members of their immediate families and their legal representatives, heirs, successors, or
3 assigns, and any entity in which Defendant has or had a controlling interest.

4 **ANSWER:** Answering Paragraph 47, Citibank denies that any class should be
5 certified in this action and that this action is appropriate for class treatment. Citibank
6 further states that, to the extent any putative class member is or was a Citibank credit card
7 customer or authorized user, the claims of such putative class members are subject to
8 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
9 in the terms and conditions governing class members' account(s) with Citibank. To the
10 extent a further response is required, Citibank denies the allegations contained therein.

11 48. The proposed class is so numerous that joinder of all members is
12 impracticable.

13 **ANSWER:** Answering Paragraph 48, Citibank denies that any class should be
14 certified in this action and that this action is appropriate for class treatment. Citibank
15 further states that, to the extent any putative class member is or was a Citibank credit card
16 customer or authorized user, the claims of such putative class members are subject to
17 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
18 in the terms and conditions governing class members' account(s) with Citibank. To the
19 extent a further response is required, Citibank denies the allegations contained therein.

20 49. While Plaintiff does not know the exact number of members of the class, it
21 is estimated to contain more than one million members.

22 **ANSWER:** Answering Paragraph 49, Citibank denies that any class should be
23 certified in this action and that this action is appropriate for class treatment. Citibank
24 further states that, to the extent any putative class member is or was a Citibank credit card
25 customer or authorized user, the claims of such putative class members are subject to
26 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
27 in the terms and conditions governing class members' account(s) with Citibank. To the
28 extent a further response is required, Citibank denies the allegations contained therein.

Ballard Spahr LLP
1 East Washington Street, Suite 2300
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1 50. The proposed class is defined by reference to objective criteria.

2 **ANSWER:** Answering Paragraph 50, Citibank denies that any class should be
3 certified in this action and that this action is appropriate for class treatment. Citibank
4 further states that, to the extent any putative class member is or was a Citibank credit card
5 customer or authorized user, the claims of such putative class members are subject to
6 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
7 in the terms and conditions governing class members' account(s) with Citibank. To the
8 extent a further response is required, Citibank denies the allegations contained therein.

9 51. In addition, the cellular telephone numbers of all members of the class can
10 be identified in business records maintained by Citibank and third parties, including class
11 members themselves.

12 **ANSWER:** Answering Paragraph 51, Citibank denies that any class should be
13 certified in this action and that this action is appropriate for class treatment. By way of
14 further answer, discovery has proven that the cellular telephone numbers of all members
15 of the class cannot be identified in business records maintained by Citibank and third
16 parties. To the extent a further response is required, Citibank denies the allegations
17 contained therein.

18 52. Plaintiff's claims are typical of the claims of the members of the class
19 because all of the class members' claims originate from the same conduct, practice and
20 procedure on the part of the Defendant, and Plaintiff possesses the same interests and has
21 suffered the same injuries as each class member.

22 **ANSWER:** Answering Paragraph 52, Citibank denies that any class should be
23 certified in this action and that this action is appropriate for class treatment. Citibank
24 further states that, to the extent any putative class member is or was a Citibank credit card
25 customer or authorized user, the claims of such putative class members are subject to
26 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
27 in the terms and conditions governing class members' account(s) with Citibank. To the
28 extent a further response is required, Citibank denies the allegations contained therein.

1 53. Plaintiff and members of the proposed class received calls made using an
2 artificial or prerecorded voice, from Citibank, without consent, on their cellular telephone,
3 in violation of 47 U.S.C. § 227.

4 **ANSWER:** Answering Paragraph 53, denied as a conclusion of law to which no
5 response is required. To the extent a response is required, Citibank denies that any class
6 should be certified in this action and that this action is appropriate for class treatment. To
7 the extent a further response is required, Citibank denies the allegations contained therein.

8 54. Plaintiff will fairly and adequately protect the interests of the members of the
9 class and has retained counsel experienced and competent in class action litigation.

10 **ANSWER:** Answering Paragraph 54, Citibank denies that any class should be
11 certified in this action and that this action is appropriate for class treatment. Citibank
12 further states that, to the extent any putative class member is or was a Citibank credit card
13 customer or authorized user, the claims of such putative class members are subject to
14 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
15 in the terms and conditions governing class members' account(s) with Citibank. To the
16 extent a further response is required, Citibank denies the allegations contained therein.

17 55. Plaintiff has no interests that are irrevocably contrary to or in conflict with
18 the members of the class that she seeks to represent.

19 **ANSWER:** Answering Paragraph 55, Citibank denies that any class should be
20 certified in this action and that this action is appropriate for class treatment. Citibank
21 further states that, to the extent any putative class member is or was a Citibank credit card
22 customer or authorized user, the claims of such putative class members are subject to
23 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
24 in the terms and conditions governing class members' account(s) with Citibank. To the
25 extent a further response is required, Citibank denies the allegations contained therein.

26 56. A class action is superior to all other available methods for the fair and
27 efficient adjudication of this controversy, since joinder of all members is impracticable.

28 **ANSWER:** Answering Paragraph 56, Citibank denies that any class should be

1 certified in this action and that this action is appropriate for class treatment. Citibank
2 further states that, to the extent any putative class member is or was a Citibank credit card
3 customer or authorized user, the claims of such putative class members are subject to
4 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
5 in the terms and conditions governing class members' account(s) with Citibank. To the
6 extent a further response is required, Citibank denies the allegations contained therein.

7 57. Furthermore, as the damages suffered by individual members of the class
8 may be relatively small, the expense and burden of individual litigation make it
9 impracticable for the members of the class to individually redress the wrongs done to them.

10 **ANSWER:** Answering Paragraph 57, Citibank denies that any class should be
11 certified in this action and that this action is appropriate for class treatment. Citibank
12 further states that, to the extent any putative class member is or was a Citibank credit card
13 customer or authorized user, the claims of such putative class members are subject to
14 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
15 in the terms and conditions governing class members' account(s) with Citibank. To the
16 extent a further response is required, Citibank denies the allegations contained therein.

17 58. There will be little difficulty in the management of this action as a class
18 action.

19 **ANSWER:** Answering Paragraph 58, Citibank denies that any class should be
20 certified in this action and that this action is appropriate for class treatment. Citibank
21 further states that, to the extent any putative class member is or was a Citibank credit card
22 customer or authorized user, the claims of such putative class members are subject to
23 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
24 in the terms and conditions governing class members' account(s) with Citibank. To the
25 extent a further response is required, Citibank denies the allegations contained therein.

26 59. Issues of law and fact common to the members of the class predominate over
27 any questions that may affect only individual members, in that Defendant has acted on
28 grounds generally applicable to the class.

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400

1 **ANSWER:** Answering Paragraph 59, Citibank denies that any class should be
2 certified in this action and that this action is appropriate for class treatment. Citibank
3 further states that, to the extent any putative class member is or was a Citibank credit card
4 customer or authorized user, the claims of such putative class members are subject to
5 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
6 in the terms and conditions governing class members' account(s) with Citibank. To the
7 extent a further response is required, Citibank denies the allegations contained therein.

- 8 60. Among the issues of the class and fact common to the class are:
- 9 a. Defendant's violations of the TCPA;
 - 10 b. Defendant's use of an artificial or prerecorded voice in connection with
 - 11 placing calls to cellular telephone numbers;
 - 12 c. Liability for calls to wrong or reassigned cellular telephone numbers;
 - 13 d. Defendant's practice of calling wrong or reassigned cellular telephone
 - 14 numbers; and
 - 15 e. The availability of statutory damages.

16 **ANSWER:** Answering Paragraph 60, Citibank denies that any class should be
17 certified in this action and that this action is appropriate for class treatment. Citibank
18 further states that, to the extent any putative class member is or was a Citibank credit card
19 customer or authorized user, the claims of such putative class members are subject to
20 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
21 in the terms and conditions governing class members' account(s) with Citibank. To the
22 extent a further response is required, Citibank denies the allegations contained therein.

23 61. Absent a class action, Defendant's violations of the law will be allowed to
24 proceed without a full, fair, judicially supervised remedy.

25 **ANSWER:** Answering Paragraph 61, Citibank denies that any class should be
26 certified in this action and that this action is appropriate for class treatment. Citibank
27 further states that, to the extent any putative class member is or was a Citibank credit card
28 customer or authorized user, the claims of such putative class members are subject to

1 arbitration on an individual, non-class basis pursuant to the arbitration agreement contained
2 in the terms and conditions governing class members' account(s) with Citibank. To the
3 extent a further response is required, Citibank denies the allegations contained therein.

4 **Count I**

5 **Violation of 47 U.S.C. § 227(b)(1)(A)(iii)**

6 62. Plaintiff repeats and re-alleges each and every factual allegation contained in
7 paragraphs 1-61.

8 **ANSWER:** Answering Paragraph 62, Citibank incorporates its responses to
9 Paragraphs 1-61 as if fully set forth herein.

10 63. Citibank violated 47 U.S.C. § 227(b)(1)(A)(iii) by making calls utilizing an
11 artificial or prerecorded voice to Plaintiff's cellular telephone number, without her consent.

12 **ANSWER:** Answering Paragraph 63, Citibank denies the allegations.

13 64. As a result of Citibank's violations of 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff
14 and members of the class are entitled to damages in an amount to be proven at trial.

15 **ANSWER:** Answering Paragraph 64, Citibank denies the allegations.

16 **Trial by Jury**

17 65. Plaintiff is entitled to, and demands, a trial by jury.

18 **ANSWER:** Answering Paragraph 65, Citibank admits Plaintiff requests a trial by
19 jury, but denies that any class should be certified in this action, that this action is
20 appropriate for class treatment, and the allegations and any implication that Plaintiff's
21 allegations have merit or Plaintiff is entitled to any relief whatsoever.

22 **PRAYER FOR RELIEF**

23 Answering Prayer for Relief and each subparagraph therein, Citibank denies the
24 allegations and any implication that Plaintiff's allegations have merit, that Plaintiff is
25 entitled to any relief whatsoever and/or that that any class should be certified in this action
26 or that this action is appropriate for class treatment.

27 Citibank denies any allegation not specifically admitted above.

28

1 **DEFENSES AND AFFIRMATIVE DEFENSES**

2 Without assuming the burden of proof where it otherwise lies with Plaintiffs,
3 Citibank, as separate and distinct defenses to the Complaint and all the claims alleged
4 therein, alleges as follows on information and belief:

5 **FIRST DEFENSE**

6 (Failure to State a Claim)

7 The Complaint, and each purported claim alleged therein, fails to set forth facts
8 sufficient to state a claim against Citibank.

9 **SECOND DEFENSE**

10 (Consent)

11 Plaintiff and any person she purports to represent is barred, in whole or in part, from
12 maintaining the alleged claims to the extent Plaintiff and any person she purports to
13 represent provided “prior express consent” within the meaning of the TCPA for all calls
14 allegedly placed by Citibank.

15 **THIRD DEFENSE**

16 (Estoppel)

17 The Complaint is barred, in whole or in part, by the conduct, actions and inactions
18 of Plaintiff, as well as the conduct, action and inactions of any person she purports to
19 represent, which amount to and constitute an estoppel of the claims and any relief sought
20 thereby.

21 **FOURTH DEFENSE**

22 (Waiver)

23 Plaintiff’s claims are barred, in whole or in part, by the conduct, actions and
24 inactions of Plaintiff, as well as the conduct, action and inactions of any person she purports
25 to represent, which amount to and constitute a waiver of any right or rights Plaintiff or any
26 person she purports to represent may or might have in relation to the matters alleged in the
27 Complaint.

28

Ballard Spahr LLP
1 East Washington Street, Suite 2300
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1 **FIFTH DEFENSE**

2 (Laches)

3 The Complaint is barred from recovery by the doctrine of laches because Plaintiff
4 and any person she purports to represent knew of the purported acts or omissions and was
5 fully aware of her rights against Citibank (if any), but nevertheless inexcusably and
6 unreasonably delayed in asserting those rights to the prejudice of Citibank.

7 **SIXTH DEFENSE**

8 (Failure to Mitigate)

9 To the extent that Plaintiff and any person she purports to represent has suffered any
10 damage as a result of the matters alleged in the Complaint, Plaintiff and any person she
11 purports to represent failed to mitigate those damages and the claims therefore are barred,
12 in whole or in part.

13 **SEVENTH DEFENSE**

14 (Lack of Standing)

15 The Complaint, and each claim and cause of action set forth therein, is barred, in
16 whole or in part, because Plaintiff and any person she purports to represent suffered no
17 injury, actual damages, or concrete and/or particularized injury-in-fact, as a result of any
18 act or practice of Citibank and, therefore, lack standing to assert a claim.

19 **EIGHTH DEFENSE**

20 (Statute of Limitations)

21 The Complaint is barred in whole or in part by the applicable statute of limitations
22 including, without limitation, 28 U.S.C. § 1658.

23 **NINTH DEFENSE**

24 (Due Process)

25 The imposition of liability and/or statutory damages of up to \$1,500 per call under
26 the TCPA would violate provisions of the United States Constitution, including the Due
27 Process Clause, on the grounds, among others, that the recovery of statutory damages of
28 up to \$1,500 per call would be wholly disproportionate to the offense and unreasonable.

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TENTH DEFENSE

(Not Knowing or Willful)

Plaintiff and any person she purports to represent is precluded from any recovery for a willful and knowing violation of the TCPA because any such violation (which Citibank denies occurred) would not have been willful or knowing.

ELEVENTH DEFENSE

(Setoff)

The claims alleged by Plaintiff and any person she purports to represent are subject to a setoff and/or recoupment.

TWELFTH DEFENSE

(Res Judicata/Collateral Estoppel)

The Complaint is barred to the extent Plaintiff and any person she purports to represent are a member of a class action and did not properly opt out of the class. Accordingly, the Complaint is barred by the doctrines of res judicata and/or collateral estoppel.

THIRTEENTH DEFENSE

(Choice of Law)

The Complaint is barred to the extent federal law and the laws of the State of South Dakota apply (to the extent not preempted by federal law), based on the choice of law provision contained in the card agreement governing the accounts of any person Plaintiff purports to represent.

FOURTEENTH DEFENSE

(Agreement to Arbitrate)

The Complaint, and each claim and cause of action set forth therein, is barred, in whole or in part, because to the extent that Plaintiff seeks to represent and/or include Citibank credit card customers as part of any putative class, the claims of such putative class members are subject to arbitration on an individual, non-class basis pursuant to the arbitration agreement contained in the terms and conditions governing class members'

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1 East Washington Street, Suite 2300
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1 account(s) with Citibank.

2 **FIFTEENTH DEFENSE**

3 (Constitutionality)

4 The Complaint, and each claim and cause of action set forth therein, is barred, in
5 whole or in part, because to statute upon which it is based has been deemed
6 unconstitutional.

7 ***

8 Citibank expressly reserves the right to assert such other and further defenses and
9 affirmative defenses as may be appropriate, based on its ongoing investigation and/or
10 documents and information obtained from Plaintiff.

11 WHEREFORE, Citibank requests the following relief:

- 12 (1) That Plaintiff’s Third Amended Complaint be dismissed with prejudice;
- 13 (2) That Plaintiff take nothing by virtue of the Third Amended Complaint;
- 14 (3) That judgment be entered in favor of Citibank;
- 15 (4) That the Court award Citibank its fees, expenses and costs to the full extent

16 permitted by law; and

- 17 (5) That the Court award such other relief as is just and proper under the
- 18 circumstances.

19 RESPECTFULLY SUBMITTED this 12th day of May, 2021.

20 BALLARD SPAHR LLP

21
22 By: /s/ Michael A. DiGiacomo
 23 John G. Kerkorian
 24 Michael A. DiGiacomo
 25 1 East Washington Street, Suite 2300
 26 Phoenix, AZ 85004-2555
 27 Attorneys for Defendant Citibank, N.A.
 28

Ballard Spahr LLP
 1 East Washington Street, Suite 2300
 Phoenix, AZ 85004-2555
 Telephone: 602.798.5400

CERTIFICATE OF SERVICE

I certify that on the 12th day of May, 2021, I electronically transmitted a PDF version of this document to the Office of the Clerk of the Court, using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to all CM/ECF registrants listed for this matter.

/s/ Vicki L. Morgan

Ballard Spahr LLP
1 East Washington Street, Suite 2300
Phoenix, AZ 85004-2555
Telephone: 602.798.5400

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