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8 Attorneys for Defendant PIVOTAL PAYMENTS
 9 INC.

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12 ABANTE ROOTER AND PLUMBING,
 13 INC., individually and on behalf of all others
 14 similarly situated,

15 Plaintiff,

16 vs.

17 PIVOTAL PAYMENTS, INC., d/b/a
 18 CAPITAL PROCESSING NETWORK and
 CPN,

19 Defendants.
 20

Case No. 16-CV-05486-JCS
 Honorable Joseph C. Spero

**DEFENDANT PIVOTAL PAYMENTS,
 INC.'S ANSWER**

Date Action Filed: September 26, 2016

Discovery Cutoff: None Set

Motion Cutoff: None Set

Trial Date: None Set

THEODORA TO ORINGHER
 COUNSELORS AT LAW

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1 Defendant Pivotal Payments, Inc. (“Pivotal”) hereby submits its Answer and Affirmative
2 Defenses to Plaintiff Abante Rooter and Plumbing, Inc.’s (“Plaintiff”) Complaint as follows:

3 **I. INTRODUCTION**

4 1. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
5 the allegations in Paragraph 1 of the Complaint, and on that basis denies them.

6 **II. PARTIES**

7 2. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
8 the allegations in Paragraph 2 of the Complaint, and on that basis denies them.

9 3. Pivotal admits the allegations in Paragraph 3 of the Complaint.

10 **III. JURISDICTION AND VENUE**

11 4. Pivotal admits that this Court has federal question jurisdiction pursuant to 28 U.S.C. §
12 1331. Pivotal denies the remaining allegations in Paragraph 4 of the Complaint.

13 5. Pivotal admits that this Court has personal jurisdiction over Pivotal because Pivotal is
14 registered to do business in California. Pivotal denies the remaining allegations in Paragraph 5 of the
15 Complaint.

16 6. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
17 the allegations in Paragraph 6 of the Complaint, and on that basis denies them.

18 **IV. THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

19 7. The allegations of Paragraph 7 of the Complaint contain legal assertions and
20 conclusions to which no response is required.

21 8. Paragraph 8 of the Complaint contains Plaintiff’s selected quotations to portions of 47
22 U.S.C. §227. Pivotal refers to 47 U.S.C. §227 for a full and accurate recitation of its language.
23 Pivotal denies the remaining allegations of Paragraph 8.

24 9. Paragraph 9 of the Complaint contains Plaintiff’s characterization of certain finding of
25 the FCC. Pivotal refers to those findings for a full and accurate description of their contents. Pivotal
26 denies the remaining allegations of Paragraph 9.

27 10. Paragraph 10 of the Complaint contains Plaintiff’s characterization of an FCC Report
28 and Order. Pivotal refers to that Report and Order for a full and accurate description of its contents.

1 11. Paragraph 11 of the Complaint contains Plaintiff’s characterization of an FCC record.
2 Pivotal refers to that record for a full and accurate description of its contents.

3 12. Paragraph 12 of the Complaint contains Plaintiff’s characterization of an FCC record.
4 Pivotal refers to that record for a full and accurate description of its contents.

5 13. Paragraph 13 of the Complaint contains Plaintiff’s characterization of an FCC record.
6 Pivotal refers to that record for a full and accurate description of its contents.

7 **IV. FACTUAL ALLEGATIONS**

8 14. Pivotal admits that it is a leading provider of technology-driven global payment
9 processing solutions for small to large enterprises in the point-of-sale, B2B and e-commerce
10 industries. Pivotal denies the remaining allegations of Paragraph 14 of the Complaint.

11 15. Pivotal admits that it delivers payment acceptance strategies to its clients, and that it
12 operates multiple divisions dedicated to specific industry segments. Pivotal denies the remaining
13 allegations of Paragraph 15 of the Complaint

14 16. Pivotal admits that one of its divisions is Capital Processing Network, and that Pivotal
15 acquired substantially all the assets of Capital Processing Network. Pivotal denies the remaining
16 allegations in Paragraph 16 of the Complaint.

17 17. Pivotal admits that Capital Processing Network provided the services listed in
18 Paragraph 17 of the Complaint at the time of Pivotal’s acquisition of Capital Processing Network’s
19 assets. Pivotal denies the remaining allegations in Paragraph 17 of the Complaint.

20 18. Pivotal denies the allegations in Paragraph 18 of the Complaint.

21 19. Pivotal denies the allegations in Paragraph 19 of the Complaint.

22 20. Pivotal denies the allegations in Paragraph 20 of the Complaint.

23 21. Pivotal denies the allegations in Paragraph 21 of the Complaint.

24 22. Pivotal admits the allegations in Paragraph 22 of the Complaint.

25 23. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
26 the allegations in Paragraph 23 of the Complaint, and on that basis denies them.

27 24. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
28 the allegations in Paragraph 24 of the Complaint, and on that basis denies them.

1 25. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations in Paragraph 25 of the Complaint, and on that basis denies them.

3 26. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
4 the allegations in Paragraph 26 of the Complaint, and on that basis denies them.

5 27. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
6 the allegations in Paragraph 27 of the Complaint, and on that basis denies them.

7 28. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
8 the allegations in Paragraph 28 of the Complaint, and on that basis denies them.

9 29. Pivotal denies the allegations in Paragraph 29 of the Complaint.

10 30. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
11 the allegations in Paragraph 30 of the Complaint, and on that basis denies them.

12 31. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
13 the allegations in Paragraph 31 of the Complaint, and on that basis denies them.

14 32. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
15 the allegations in Paragraph 32 of the Complaint, and on that basis denies them.

16 33. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
17 the allegations in Paragraph 33 of the Complaint, and on that basis denies them.

18 34. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
19 the allegations in Paragraph 34 of the Complaint, and on that basis denies them.

20 35. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
21 the allegations in Paragraph 35 of the Complaint, and on that basis denies them.

22 36. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
23 the allegations in Paragraph 36 of the Complaint, and on that basis denies them.

24 37. Pivotal denies the allegations in Paragraph 37 of the Complaint.

25 38. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
26 the allegations in Paragraph 38 of the Complaint, and on that basis denies them.

27 39. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
28 the allegations in Paragraph 39 of the Complaint, and on that basis denies them.

1 40. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations in Paragraph 40 of the Complaint, and on that basis denies them.

3 41. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
4 the allegations in Paragraph 41 of the Complaint, and on that basis denies them.

5 42. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
6 the allegations in Paragraph 42 of the Complaint, and on that basis denies them.

7 43. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
8 the allegations in Paragraph 43 of the Complaint, and on that basis denies them.

9 44. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
10 the allegations in Paragraph 44 of the Complaint, and on that basis denies them.

11 45. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
12 the allegations in Paragraph 45 of the Complaint, and on that basis denies them.

13 46. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
14 the allegations in Paragraph 46 of the Complaint, and on that basis denies them.

15 47. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
16 the allegations in Paragraph 47 of the Complaint, and on that basis denies them.

17 48. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
18 the allegations in Paragraph 48 of the Complaint, and on that basis denies them.

19 49. Pivotal denies the allegations in Paragraph 49 of the Complaint.

20 50. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
21 the allegations in Paragraph 50 of the Complaint, and on that basis denies them.

22 51. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
23 the allegations in Paragraph 51 of the Complaint, and on that basis denies them.

24 52. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
25 the allegations in Paragraph 52 of the Complaint, and on that basis denies them.

26 53. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
27 the allegations in Paragraph 53 of the Complaint, and on that basis denies them.

28 54. Pivotal denies the allegations in Paragraph 54 of the Complaint.

1 55. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
2 the allegations in Paragraph 55 of the Complaint, and on that basis denies them.

3 56. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
4 the allegations in Paragraph 56 of the Complaint, and on that basis denies them.

5 57. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
6 the allegations in Paragraph 57 of the Complaint, and on that basis denies them.

7 58. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
8 the allegations in Paragraph 58 of the Complaint, and on that basis denies them.

9 59. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
10 the allegations in Paragraph 59 of the Complaint, and on that basis denies them.

11 60. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
12 the allegations in Paragraph 60 of the Complaint, and on that basis denies them.

13 61. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
14 the allegations in Paragraph 61 of the Complaint, and on that basis denies them.

15 62. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
16 the allegations in Paragraph 62 of the Complaint, and on that basis denies them.

17 63. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
18 the allegations in Paragraph 63 of the Complaint, and on that basis denies them.

19 64. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
20 the allegations in Paragraph 64 of the Complaint, and on that basis denies them.

21 65. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
22 the allegations in Paragraph 65 of the Complaint, and on that basis denies them.

23 66. Pivotal denies the allegations in Paragraph 66 of the Complaint.

24 67. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
25 the allegations in Paragraph 67 of the Complaint, and on that basis denies them.

26 68. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
27 the allegations in Paragraph 68 of the Complaint, and on that basis denies them.

28 69. Pivotal is without sufficient knowledge or information to form a belief as to the truth of

1 the allegations in Paragraph 69 of the Complaint, and on that basis denies them.

2 70. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
3 the allegations in Paragraph 70 of the Complaint, and on that basis denies them.

4 71. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
5 the allegations in Paragraph 71 of the Complaint, and on that basis denies them.

6 72. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
7 the allegations in Paragraph 72 of the Complaint, and on that basis denies them.

8 73. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
9 the allegations in Paragraph 73 of the Complaint, and on that basis denies them.

10 74. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
11 the allegations in Paragraph 74 of the Complaint, and on that basis denies them.

12 75. Pivotal denies the allegations in Paragraph 75 of the Complaint.

13 76. Pivotal denies the allegations in Paragraph 76 of the Complaint.

14 77. Pivotal denies the allegations in Paragraph 77 of the Complaint.

15 78. Pivotal denies the allegations in Paragraph 78 of the Complaint.

16 79. Pivotal denies the allegations in Paragraph 79 of the Complaint.

17 80. Pivotal denies the allegations in Paragraph 80 of the Complaint.

18 81. Pivotal denies the allegation that Pivotal used the number identified in Paragraph 81 of
19 the Complaint. Pivotal is without sufficient knowledge or information to form a belief as to the truth
20 of the remaining allegations in Paragraph 81 of the Complaint, and on that basis denies them.

21 82. Pivotal is without sufficient knowledge or information to form a belief as to the truth of
22 the allegations in Paragraph 82 of the Complaint, and on that basis denies them.

23 **III. CLASS ACTION ALLEGATIONS**

24 83. Pivotal admits that Plaintiff purports to bring this action on behalf of a specified class.
25 Pivotal denies that the class described in Paragraph 83 of the Complaint is viable. Pivotal is without
26 sufficient knowledge or information to form a belief as to the truth of the remaining allegations in
27 Paragraph 83 of the Complaint, and on that basis denies them.

28 84. Pivotal denies the allegations in Paragraph 84 of the Complaint.

1 85. Pivotal denies the allegations in Paragraph 85 of the Complaint.

2 86. Pivotal denies the allegations in Paragraph 86 of the Complaint.

3 87. Pivotal denies the allegations in Paragraph 87 of the Complaint.

4 88. Pivotal denies the allegations in Paragraph 88 of the Complaint.

5 89. Pivotal denies the allegations in Paragraph 89 of the Complaint.

6 90. Pivotal denies the allegations in Paragraph 90 of the Complaint.

7 **FIRST CLAIM FOR RELIEF**

8 (Violations of the TCPA, 47 U.S.C. § 227(b)(1)(A))

9 91. Pivotal incorporates by reference its answer to Paragraphs 1 to 90 of the Complaint.

10 92. Pivotal denies the allegations in Paragraph 92 of the Complaint.

11 93. Pivotal denies the allegations in Paragraph 93 of the Complaint.

12 94. Pivotal denies the allegations in Paragraph 94 of the Complaint.

13 **SECOND CLAIM FOR RELIEF**

14 (Knowing and/or Willful Violations of the TCPA, 47 U.S.C. § 227(b)(1)(A))

15 95. Pivotal incorporates by reference its answer to Paragraphs 1 to 94 of the Complaint.

16 96. Pivotal denies the allegations in Paragraph 96 of the Complaint.

17 97. Pivotal denies the allegations in Paragraph 97 of the Complaint.

18 **PRAYER FOR RELIEF**

19 98. Pivotal denies that Plaintiff is entitled to any relief by way of its Complaint.

20 **AFFIRMATIVE DEFENSES**

21 Pivotal asserts the following Affirmative Defenses to the Complaint:

22 **FIRST AFFIRMATIVE DEFENSE**

23 **(Standing)**

24 Plaintiff lacks standing to bring the claims asserted in the Complaint because Plaintiff has not
25 suffered a concrete injury in fact by the alleged conduct at issue.
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SECOND AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff's Complaint is barred in whole or in part by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Laches)

Plaintiff's Complaint is barred in whole or in part by the equitable doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

Plaintiff's Complaint is barred in whole or in part by the doctrine of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

Plaintiff's Complaint is barred in whole or in part by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Acquiescence)

Plaintiff's Complaint is barred in whole or in part by the doctrine of acquiescence.

SEVENTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiff's Complaint is barred in whole or in part because Plaintiff and/or one or more members of the putative class consented to receiving the alleged calls.

EIGHTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff's Complaint is barred in whole or in part because Plaintiff and/or one or more members of the putative class failed to take reasonable steps to mitigate any alleged damages.

NINTH AFFIRMATIVE DEFENSE

(Failure to Join Necessary Parties)

Plaintiff's Complaint is barred in whole or in part because Plaintiff failed to join necessary and indispensable parties, including Gordon Rose and EPLJ, LLC.

RESERVATION OF RIGHT TO ASSERT

ADDITIONAL AFFIRMATIVE DEFENSES

Pivotal has insufficient knowledge or information upon which to form a belief as to whether it may have additional, and as yet unstated affirmative defenses available to it, and Pivotal reserves the right to assert such additional defenses in the event that further discovery, investigation or analysis so warrants.

PRAYER FOR RELIEF

WHEREFORE, Pivotal prays for judgment against Plaintiff as follows:

1. That Plaintiff takes nothing by virtue of its Complaint;
2. That Plaintiff's Complaint be dismissed with prejudice; and
3. For such other relief as the Court may deem appropriate.

DATED: March 10, 2017

THEODORA ORINGHER PC

By: /s/Amy E. Burke/s/
 Antony Buchignani
 Amy E. Burke
 Attorneys for Defendant
 PIVOTAL PAYMENTS INC.

THEODORA **TO** ORINGHER
COUNSELORS AT LAW

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