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10 Attorneys for Defendant
11 DUN & BRADSTREET CREDIBILITY CORP.

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 JEFFREY A. THOMAS, individually
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 v.

20 DUN & BRADSTREET
21 CREDIBILITY CORP.,

22 Defendant.

23 CASE NO. CV15-03194 BRO (GJSx)

24 **DEFENDANT DUN & BRADSTREET
25 CREDIBILITY CORP.’S ANSWER
26 TO COMPLAINT**

27 ACTION FILED: April 28, 2015

28 ANSWER DUE: August 20, 2015

Defendant Dun & Bradstreet Credibility Corp. (“D&B Credibility” or “Defendant”) files this Answer to Plaintiff Jeffrey A. Thomas’s Complaint (“Complaint”) [Dkt. #1]. To the extent that the allegations in the Complaint call for legal conclusions, no response is required. Any factual allegation or averment not specifically admitted in this Answer is denied. D&B Credibility answers the corresponding numbered paragraphs of the Complaint as follows:

1. Admit that Plaintiff brings an action under the Telephone Consumer Protection Act, the Federal Communication Commission rules promulgated thereunder, and California Business & Professions Code § 17200. Deny the remaining allegations in paragraph 1.

1 2. Admit that Plaintiff brings an action for damages and other legal and
2 equitable remedies for violation of the TCPA, Rules, and UCL, but deny that Plaintiff
3 is entitled to such relief, or to any relief, based on the allegations in the Complaint.

4 3. Paragraph 3 states legal conclusions to which no response is required. To
5 the extent a response is required, defendant lacks knowledge or information sufficient
6 to form a belief as to the truth of the allegations in paragraph 3, and therefore denies
7 these allegations.

8 4. This paragraph states a legal conclusion to which no response is required.
9 To the extent a response is required, Defendant admits that the Court has federal
10 question jurisdiction over the TCPA claim. Defendant denies the remaining
11 allegations in paragraph 4.

12 5. This paragraph states legal conclusions to which no response is required.
13 To the extent a response is required, Defendant admits D&B Credibility is a
14 corporation with a place of business in California.

15 6. Admit that D&B Credibility has a place of business in this judicial
16 district. To the extent this paragraph states legal conclusions, no response is required.
17 To the extent a response is required, Defendant denies the remaining allegations in
18 paragraph 6.

19 7. Defendant lacks knowledge and information sufficient to form a belief as
20 to the truth of the allegations in paragraph 7, and therefore denies them.

21 8. Admit that D&B Credibility is a Delaware corporation with a place of
22 business at 22761 Pacific Coast Highway, Malibu, California 90265, and that D&B
23 Credibility is a leading seller of credit building and credibility solutions for businesses.

24 9. Paragraph 9 states a legal conclusion to which no response is required. To
25 the extent a response is required, Defendant respectfully refers to the text of the
26 underlying statute that purports to be referenced in this paragraph, the complete
27 version of which speaks for itself.

28

1 10. Paragraph 10 states legal conclusions to which no response is required.
2 To the extent a response is required, Defendant respectfully refers to the text of the
3 underlying statute that purports to be referenced in this paragraph, the complete
4 version of which speaks for itself.

5 11. Paragraph 11 states legal conclusions to which no response is required.
6 To the extent a response is required, Defendant respectfully refers to the text of the
7 underlying statute that purports to be referenced in this paragraph, the complete
8 version of which speaks for itself, and respectfully refers to the text of the underlying
9 Regulation that purports to be referenced in this paragraph, the complete version of
10 which speaks for itself.

11 12. Paragraph 12 states a legal conclusion to which no response is required.
12 To the extent a response is required, Defendant respectfully refers to the text of the
13 underlying statute that purports to be referenced in this paragraph, the complete
14 version of which speaks for itself.

15 13. Paragraph 13 states legal conclusions to which no response is required.
16 To the extent a response is required, Defendant respectfully refers to the text of the
17 underlying Rules and Regulations that purport to be referenced in this paragraph, the
18 complete versions of which speak for themselves.

19 14. Paragraph 14 states legal conclusions to which no response is required.
20 To the extent a response is required, Defendant respectfully refers to the text of the
21 underlying FCC Order that purports to be referenced in this paragraph, the complete
22 version of which speaks for itself.

23 15. Paragraph 15 states a legal conclusion to which no response is required.
24 To the extent a response is required, Defendant respectfully refers to the text of the
25 underlying Regulation that purports to be referenced in this paragraph, the complete
26 version of which speaks for itself.

27 16. Paragraph 16 states a legal conclusion to which no response is required.
28 To the extent a response is required, Defendant respectfully refers to the text of the

1 underlying statute that purports to be referenced in this paragraph, the complete
2 version of which speaks for itself, and respectfully refers to the text of the underlying
3 FCC Order that purports to be referenced in this paragraph, the complete version of
4 which speaks for itself.

5 17. Paragraph 17 states a legal conclusion to which no response is required.
6 To the extent a response is required, Defendant respectfully refers to the text of the
7 underlying Declaratory Ruling that purports to be referenced in this paragraph, the
8 complete version of which speaks for itself.

9 18. Paragraph 18 states legal conclusions to which no response is required.
10 To the extent a response is required, Defendant denies the allegations in paragraph 18.

11 19. Paragraph 19 states a legal conclusion to which no response is required.
12 To the extent a response is required, Defendant respectfully refers to the text of the
13 underlying statute that purports to be referenced in this paragraph, the complete
14 version of which speaks for itself.

15 20. Paragraph 20 states legal conclusions to which no response is required.
16 To the extent a response is required, Defendant respectfully refers to the text of the
17 underlying statute, regulations and Orders that purport to be referenced in this
18 paragraph, the complete versions of which speak for themselves.

19 21. Paragraph 21 states a legal conclusion to which no response is required.
20 To the extent a response is required, Defendant lacks knowledge or information
21 sufficient to form a belief as to the truth of the allegations in paragraph 21, and
22 therefore denies them.

23 22. Paragraph 22 states legal conclusions to which no response is required.
24 To the extent a response is required, Defendant lacks knowledge or information
25 sufficient to form a belief as to the truth of the allegations in paragraph 22, and
26 therefore denies them.

27 23. Defendant denies the allegations in paragraph 23.
28

1 24. Admit that Exhibit A to the Compliant is a letter signed by Executive
2 Vice President of J and J Thomas Inc., Jeffrey A. Thomas, dated October 8, 2013, and
3 requesting himself, any member of J and J Thomas Inc., and several subsidiaries be
4 placed on Defendant's do-not-call list. Defendant otherwise denies the remaining
5 allegations in paragraph 24.

6 25. Defendant denies the allegations in paragraph 25.

7 26. Admit that Exhibit A to the Compliant is a letter dated October 8, 2013
8 addressed to Defendant. Defendant lacks knowledge or information sufficient to form
9 a belief as to the truth of the remaining allegations in paragraph 26, and therefore
10 denies them.

11 27. Admit that Defendant, OLC, Alorica Inc., Infinity Client Solutions, and
12 Optima Communications International Inc. have, at various points in time, placed calls
13 to businesses regarding Defendant's credit-related services for businesses. Defendant
14 denies the remaining allegations in paragraph 27.

15 28. This paragraph states a legal conclusion to which no response is required.
16 To the extent a response is required, Defendant respectfully refers to the text of the
17 underlying statute that purports to be referenced in this paragraph, the complete
18 version of which speaks for itself.

19 29. This paragraph states a legal conclusion to which no response is required.
20 To the extent a response is required, Defendant denies each and every allegation in
21 paragraph 29.

22 30. This paragraph states a legal conclusion to which no response is required.
23 To the extent a response is required, Defendant denies the allegations in paragraph 30.

24 31. This paragraph states a legal conclusion to which no response is required.
25 To the extent a response is required, Defendant denies the allegations in paragraph 31.

26 32. This paragraph states a legal conclusion to which no response is required.
27 To the extent a response is required, Defendant denies each and every allegation in
28 paragraph 32.

1 33. To the extent that this paragraph purports to characterize or quote from a
2 document, Defendant respectfully refers to the alleged writing referenced in this
3 paragraph, which speaks for itself. To the extent a further response is required, D&B
4 Credibility is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations in this paragraph and, on that basis, denies them.

6 34. This paragraph states a legal conclusion to which no response is required.
7 To the extent a response is required, Defendant lacks knowledge or information
8 sufficient to form a belief as to the truth of the remaining allegations in paragraph 34,
9 and therefore denies them.

10 35. To the extent that this paragraph purports to characterize or quote from a
11 document, Defendant denies Plaintiff's characterizations and respectfully refers to the
12 document cited in this paragraph, the complete version of which speaks for itself.
13 Defendant denies the remaining allegations in paragraph 35.

14 36. This paragraph asserts legal conclusions to which no response is required.
15 To the extent a response is required, Defendant lacks knowledge or information
16 sufficient to form a belief as to the truth of the allegations in paragraph 36, and
17 therefore denies them.

18 37. This paragraph asserts legal conclusions to which no response is required.
19 To the extent a response is required, Defendant lacks knowledge or information
20 sufficient to form a belief as to the truth of the allegations in paragraph 37, and
21 therefore denies them.

22 38. Defendant hereby incorporates by reference its responses to all other
23 paragraphs of the Complaint.

24 39. This paragraph asserts legal conclusions to which no response is required.
25 To the extent a response is required, Defendant denies the allegations in paragraph 39.

26 40. This paragraph asserts legal conclusions to which no response is required.
27 To the extent a response is required, Defendant is without knowledge or information
28

1 sufficient to form a belief as to the truth of the allegations in paragraph 40, and
2 therefore denies them.

3 41. This paragraph asserts legal conclusions to which no response is required.
4 To the extent a response is required, Defendant denies the allegations in paragraph 41.

5 42. Defendant is without knowledge or information sufficient to form a
6 response as to Plaintiff's knowledge and beliefs regarding the size of the class, and
7 therefore denies the allegations in paragraph 42.

8 43. This paragraph asserts legal conclusions to which no response is required.
9 To the extent a response is required, Defendant denies the allegations in paragraph 43.

10 44. Admit that the Class Action Complaint seeks such relief, but deny that
11 Plaintiff and/or the Class are entitled to such relief, or to any relief, based on the
12 allegations in the Complaint.

13 45. This paragraph states a legal conclusion to which no response is required.
14 To the extent a response is required, Defendant denies the allegations in paragraph 45.

15 46. This paragraph states a legal conclusion to which no response is required.
16 To the extent a response is required, Defendant denies the allegations in paragraph 46.

17 47. This paragraph states a legal conclusion to which no response is required.
18 To the extent a response is required, Defendant denies the allegations in paragraph 47.

19 48. This paragraph states legal conclusions to which no response is required.
20 To the extent a response is required, Defendant denies the allegations in paragraph 48.

21 49. This paragraph states legal conclusions to which no response is required.
22 To the extent a response is required, Defendant denies the allegations in paragraph 49.

23 50. This paragraph states legal conclusions to which no response is required.
24 To the extent a response is required, Defendant denies the allegations in paragraph 50.

25 51. This paragraph states a legal conclusion to which no response is required.
26 To the extent a response is required, Defendant denies the allegations in paragraph 51.

27 52. This paragraph states a legal conclusion to which no response is required.
28 To the extent a response is required, Defendant denies the allegations in paragraph 52.

1 53. This paragraph states a legal conclusion to which no response is required.
2 To the extent a response is required, Defendant denies the allegations in paragraph 53.

3 54. Defendant lacks knowledge or information sufficient to form a belief as to
4 the truth of the allegations in paragraph 54, and therefore denies them.

5 55. This paragraph states a legal conclusion to which no response is required.
6 To the extent a response is required, Defendant denies the allegations in paragraph 55.

7 56. This paragraph states a legal conclusion to which no response is required.
8 To the extent a response is required, Defendant denies the allegations in paragraph 56.

9 57. This paragraph states a legal conclusion to which no response is required.
10 To the extent a response is required, Defendant denies the allegations in paragraph 57.

11 58. This paragraph states a legal conclusion to which no response is required.
12 To the extent a response is required, Defendant denies the allegations in paragraph 58.

13 59. This paragraph states a legal conclusion to which no response is required.
14 To the extent a response is required, Defendant denies the allegations in paragraph 59.

15 60. This paragraph states a legal conclusion to which no response is required.
16 To the extent a response is required, Defendant denies the allegations in paragraph 60.

17 61. This paragraph states legal conclusions to which no response is required.
18 To the extent a response is required, Defendant admits D&B Credibility has a place of
19 business in California, and otherwise denies the remaining allegations in paragraph 61.

20 62. Defendant incorporates its responses to all other paragraphs of the
21 Complaint as if fully stated in this paragraph.

22 63. This paragraph states legal conclusions to which no response is required.
23 To the extent a response is required, Defendant denies the allegations in paragraph 63.

24 64. This paragraph states legal conclusions to which no response is required.
25 To the extent a response is required, Defendant denies the allegations in paragraph 64.

26 65. This paragraph states legal conclusions to which no response is required.
27 To the extent a response is required, Defendant denies the allegations in paragraph 65.

28

1 purports to seek such relief, but denies that Plaintiff is entitled to such relief, or to any
2 relief, based on the allegations in the Complaint.

3 **AFFIRMATIVE DEFENSES**

4 Further answering the Complaint, Defendant asserts the following Separate and
5 Additional Defenses. By alleging the Separate and Additional Defenses set forth
6 below, Defendant intends no alteration of the burden of proof and/or burden of going
7 forward with evidence which otherwise exists with respect to any particular issue at
8 law or in equity. Furthermore, all defenses are pleaded in the alternative, and do not
9 constitute an admission of liability or that Plaintiff is entitled to any relief whatsoever.
10 Finally, all defenses pleaded below are based upon Defendant's limited understanding
11 of the claims being asserted by Plaintiff and are intended, among other things, to
12 preserve all potential defenses upon further clarification of Plaintiff's claims and
13 assertions. Assertion of such a defense is not a concession that Defendant has the
14 burden of proof or the burden of persuasion in any of these issues. Defendant reserves
15 the right to assert other defenses or claims when and if they become appropriate and/or
16 available in this action:

17 **FIRST AFFIRMATIVE DEFENSE**
18 **(Failure to State a Claim)**

19 In the alternative, without admitting any liability whatsoever and without
20 admitting that Plaintiff has suffered any loss or damage whatsoever, the Complaint and
21 each of its purported causes of action fail to state a claim upon which relief can be
22 granted.

23 **SECOND AFFIRMATIVE DEFENSE**
24 **(Failure to Allege with Sufficient Particularity)**

25 In the alternative, without admitting any liability whatsoever and without
26 admitting that Plaintiff has suffered any loss or damage whatsoever, the Complaint
27 fails to allege facts supporting any of its purported causes of action with sufficient
28 particularity.

1 **SEVENTH AFFIRMATIVE DEFENSE**
2 **(Consent)**

3 In the alternative, without admitting any liability whatsoever and without
4 admitting that Plaintiff has suffered any loss or damage whatsoever, the Complaint and
5 each of its purported causes of action are barred in whole or in part by the doctrine of
6 consent because Plaintiff and/or its agent(s) approved the actions, decisions, and
7 strategies of which Plaintiff complains, and expressly concurred in those actions,
8 decisions, and strategies.

9 **EIGHTH AFFIRMATIVE DEFENSE**
10 **(Unclean Hands)**

11 In the alternative, without admitting any liability whatsoever and without
12 admitting that Plaintiff has suffered any loss or damage whatsoever, the Complaint and
13 each of its purported causes of action are barred in whole or in part because even if
14 Plaintiff's allegations were true, which Defendant denies, Plaintiff's claims are barred
15 under the doctrine of unclean hands because Plaintiff and/or its agent(s) have acted
16 unfairly and/or in bad faith.

17 **NINTH AFFIRMATIVE DEFENSE**
18 **(Waiver)**

19 In the alternative, without admitting any liability whatsoever and without
20 admitting that Plaintiff has suffered any loss or damage whatsoever, the Complaint and
21 each of its purported causes of action are barred in whole or in part by the doctrine of
22 waiver because Plaintiff and/or its agent(s) had knowledge, either actual or
23 constructive, of Plaintiff's rights and either had an actual intention to relinquish such
24 rights or engaged in conduct so inconsistent with such rights so as to induce a
25 reasonable belief that such rights had been relinquished.

26 **TENTH AFFIRMATIVE DEFENSE**
27 **(Failure to Mitigate Damages)**

28 In the alternative, without admitting any liability whatsoever and without
admitting that Plaintiff has suffered any loss or damage whatsoever, if Plaintiff has

1 suffered any loss or damage as alleged in the Complaint or otherwise, Plaintiff has
2 failed to mitigate or minimize such loss or damage.

3 **ELEVENTH AFFIRMATIVE DEFENSE**
4 **(Cause in Fact)**

5 In the alternative, without admitting any liability whatsoever and without
6 admitting that Plaintiff has suffered any loss or damage whatsoever, Plaintiff has not
7 alleged that any act or omission by Defendant or any agent thereof was the cause of
8 any injury in fact, damages, or loss of money or property alleged by Plaintiff.

9 **TWELFTH AFFIRMATIVE DEFENSE**
10 **(Proximate Cause)**

11 In the alternative, without admitting any liability whatsoever and without
12 admitting that Plaintiff has suffered any loss or damage whatsoever, Plaintiff has not
13 alleged that any act or omission by Defendant or any agent thereof was the proximate
14 cause of any injury in fact, damages, or loss of money or property alleged by Plaintiff.

15 **THIRTEENTH AFFIRMATIVE DEFENSE**
16 **(Substantial Compliance)**

17 In the alternative, without admitting any liability whatsoever and without
18 admitting that Plaintiff has suffered any loss or damage whatsoever, Defendant has
19 substantially complied with the requirements of the law as they pertain to this lawsuit.

20 **FOURTEENTH AFFIRMATIVE DEFENSE**
21 **(Adequate Remedy at Law)**

22 In the alternative, without admitting any liability whatsoever and without
23 admitting that Plaintiff has suffered any loss or damage whatsoever, Plaintiff fails to
24 state a claim for equitable relief because, among other things, Plaintiff has an adequate
25 remedy at law.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**
27 **(Good Faith)**

28 In the alternative, without admitting any liability whatsoever and without
admitting that Plaintiff has suffered any loss or damage whatsoever, Defendant at all

1 times acted in good faith and within reasonable commercial standards as to the matters
2 alleged in the Complaint.

3 **SIXTEENTH AFFIRMATIVE DEFENSE**
4 **(No Basis for Injunctive Relief)**

5 In the alternative, without admitting any liability whatsoever and without
6 admitting that Plaintiff has suffered any loss or damage whatsoever, the injuries
7 alleged in the Complaint provide no basis for injunctive relief.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**
9 **(Acts of Agents and Employees Outside Scope of Employment)**

10 In the alternative, without admitting any liability whatsoever and without
11 admitting that Plaintiff has suffered any loss or damage whatsoever, Defendant is not
12 liable for any actions of its agents or employees committed outside of the line and
13 scope of their employment.

14 **EIGHTEENTH AFFIRMATIVE DEFENSE**
15 **(Due Process—Excessive Fine)**

16 In the alternative, without admitting any liability whatsoever and without
17 admitting that Plaintiff has suffered any loss or damage whatsoever, any classwide
18 award of punitive or statutory damages against Defendant would be unconstitutional
19 under the Due Process Clause of the Fourteenth Amendment to the United States
20 Constitution, and the Excessive Fines Clause of the Eighth Amendment to the United
21 States Constitution.

22 **NINETEENTH AFFIRMATIVE DEFENSE**
23 **(Statute of Limitations)**

24 To the extent the alleged injuries of Plaintiff or those alleged to be members of
25 the putative class and/or their cause of action arose prior to the applicable prescriptive
26 or statutory period, their claims are barred, in whole or in part, by the applicable
27 statutes of limitations and/or statutes of repose.
28

1 **TWENTIETH AFFIRMATIVE DEFENSE**
2 **(Suit May Not Proceed as a Class Action)**

3 Defendant alleges that Plaintiff may not maintain this lawsuit as a class action
4 because his purported claim is not sufficiently typical of those of the purported class,
5 common issues of fact and law do not predominate over individual issues, damages
6 cannot be proven on a class-wide basis, the purported plaintiff class representative will
7 not adequately represent the purported plaintiff class, and a class action is not a
8 superior method for adjudicating the purported claims set forth in Plaintiff's
9 Complaint.

10 **TWENTY-FIRST AFFIRMATIVE DEFENSE**
11 **(Intra-Class Conflicts)**

12 Defendant alleges that Plaintiff may not maintain this lawsuit as a class action
13 because the interests of the purported class members are in conflict with each other.

14 **TWENTY-SECOND AFFIRMATIVE DEFENSE**
15 **(Due Process—Notification of Absent Putative Class Members)**

16 Defendant alleges that any attempt to require D&B Credibility to identify,
17 locate, or notify absent persons on whose behalf this action is allegedly prosecuted
18 would violate the Due Process Clause of the Fourteenth Amendment to the United
19 States Constitution.

20 **TWENTY-THIRD AFFIRMATIVE DEFENSE**
21 **(Due Process—Arbitrary and Capricious)**

22 Any finding of liability under state consumer protection acts, including the
23 California Unfair Competition Law, would violate the Due Process Clause of the
24 Fourteenth Amendment to the United States Constitution, and of various state
25 constitutions, because the standards of liability under these statutes are unduly vague
26 and subjective, and permit retroactive, random, arbitrary, and capricious punishment
27 that serves no legitimate governmental interest, and cannot be applied to alleged
28 injuries occurring outside of California.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**
2 **(Due Process—Extraterritoriality)**

3 Plaintiff's claims and/or the claims of the putative class members arising under a
4 particular state's laws are barred in whole or in part, because the application of these
5 claims to wholly interstate or foreign commerce violates the Commerce Clause of the
6 United States Constitution and is otherwise beyond the scope of jurisdiction of those
7 laws.

8 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**
9 **(Primary Jurisdiction)**

10 Plaintiff's Complaint, and each of its purported causes of action, is barred by the
11 doctrine of primary jurisdiction and failure to exhaust nonjudicial remedies.

12 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**
13 **(Reservation of Rights)**

14 The Complaint does not describe the events and claims with sufficient
15 particularity to enable Defendant to determine all of the defenses which may exist to
16 such events and claims. Defendant therefore reserves its right to add, delete, or modify
17 any and all defenses which may pertain to the Complaint if the precise nature of such
18 events and claims is determined through clarification or amendment of the Complaint,
19 through discovery, through further legal analysis of Plaintiff's claims and positions in
20 this litigation, or otherwise.

21 **JURY DEMAND:**

22 Defendant demands a trial by jury.

23 **DEFENDANT'S PRAYER FOR RELIEF**


24 WHEREFORE, Defendant prays for judgment as follows:

- 25 (a) That Plaintiff take nothing by way of the Complaint and the Court dismiss
26 the Complaint with prejudice;
- 27 (b) That the Court enter judgment that Defendant is the prevailing party in
28 this action;

1 (c) That the Court award Defendant all costs, expenses, and attorneys' fees;
2 and
3 (d) That the Court award any and all other relief to which Defendant may be
4 entitled.

5
6 Dated: August 20, 2015.

7 GAIL LEES
8 TIMOTHY W. LOOSE
9 GIBSON, DUNN & CRUTCHER LLP

10 By: 
11 Timothy W. Loose

12 Attorneys for Defendant DUN &
13 BRADSTREET CREDIBILITY CORP.