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

12 **DEEBA ABEDI**, individually and
 13 on behalf of all others similarly
 14 situated,

14 Plaintiff,

15 v.

16 **NEW AGE MEDICAL CLINIC**
 17 **PA, and DOES 1-10, inclusive,**

18 Defendants.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES
 AND INJUNCTIVE RELIEF
 PURSUANT TO THE TELEPHONE
 CONSUMER PROTECTION ACT,
 47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

19 **INTRODUCTION**

20 1. DEEBA ABEDI (“Plaintiff”) bring this Class Action Complaint for
 21 damages, injunctive relief, and any other available legal or equitable remedies,
 22 resulting from the illegal actions of NEW AGE MEDICAL CLINIC PA
 23 (“Defendants”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone,
 24 in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.,
 25 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon
 26 personal knowledge as to himself and his own acts and experiences, and, as to all
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1 other matters, upon information and belief, including investigation conducted by
2 their attorneys.

3 2. The TCPA was designed to prevent calls and messages like the ones
4 described within this complaint, and to protect the privacy of citizens like Plaintiff.
5 “Voluminous consumer complaints about abuses of telephone technology – for
6 example, computerized calls dispatched to private homes – prompted Congress to
7 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings that
10 “[t]echnologies that might allow consumers to avoid receiving such calls are not
11 universally available, are costly, are unlikely to be enforced, or place an inordinate
12 burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end,
13 Congress found that

14 [b]anning such automated or prerecorded telephone calls to the home,
15 except when the receiving party consents to receiving the call or when
16 such calls are necessary in an emergency situation affecting the health
17 and safety of the consumer, is the only effective means of protecting
18 telephone consumers from this nuisance and privacy invasion.

19 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
20 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
21 purpose).

22 4. Congress also specifically found that “the evidence presented to the
23 Congress indicates that automated or prerecorded calls are a nuisance and an
24 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also, *Mims*,
25 132 S. Ct. at 744.

26 5. As Judge Easterbrook of the Seventh Circuit recently explained in a
27 TCPA case regarding calls to a non-debtor similar to this one:
28

1 The Telephone Consumer Protection Act ... is well known for its
2 provisions limiting junk-fax transmissions. A less-litigated part of the
3 Act curtails the use of automated dialers and prerecorded messages to
4 cell phones, whose subscribers often are billed by the minute as soon
5 as the call is answered—and routing a call to voicemail counts as
6 answering the call. An automated call to a landline phone can be an
7 annoyance; an automated call to a cell phone adds expense to
8 annoyance.

9 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

10 JURISDICTION AND VENUE

11 6. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a
12 resident of California, seeks relief on behalf of a Class, which will result in at least
13 one class member belonging to a different state than that of Defendants, a New
14 Jersey company headquartered in New Jersey and doing business within and
15 throughout California. Plaintiff also seeks \$1,500.00 in damages for each call in
16 violation of the TCPA, which, when aggregated among a proposed class in the
17 thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction.
18 Therefore, both diversity jurisdiction and the damages threshold under the Class
19 Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

20 7. Venue is proper in the United States District Court for the Eastern
21 District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendants are
22 subject to personal jurisdiction in the County of Merced, State of California.

23 PARTIES

24 8. Plaintiff is, and at all times mentioned herein was, a citizen and resident
25 of the State of California. Plaintiff is, and at all times mentioned herein was, a
26 “person” as defined by 47 U.S.C. § 153(39).

27 9. Plaintiff is informed and believes, and thereon alleges, that Defendants
28 are, and at all times mentioned herein were, individuals who reside and do business
within the State of California. Defendants, are and at all times mentioned herein
were “persons,” as defined by 47 U.S.C. § 153(39). Defendants provide dental

1 restoring and enhancing services. Plaintiff alleges that at all times relevant herein
2 Defendants conducted business in the State of California and in the County of
3 Merced, and within this judicial district.

4 10. The above named Defendant, and its subsidiaries and agents, are
5 collectively referred to as “Defendants.” The true names and capacities of the
6 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
7 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
8 names. Each of the Defendants designated herein as a DOE is legally responsible
9 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
10 Complaint to reflect the true names and capacities of the DOE Defendants when
11 such identities become known.

12 11. Plaintiff is informed and believes that at all relevant times, each and
13 every Defendant was acting as an agent and/or employee of each of the other
14 Defendants and was acting within the course and scope of said agency and/or
15 employment with the full knowledge and consent of each of the other Defendants.
16 Plaintiff is informed and believes that each of the acts and/or omissions complained
17 of herein was made known to, and ratified by, each of the other Defendants

18 **FACTUAL ALLEGATIONS**

19 12. At all times relevant, Plaintiff was a citizen of the County of Merced,
20 State of California. Plaintiff is, and at all times mentioned herein was, a “person” as
21 defined by 47 U.S.C. § 153(39).

22 13. Defendants are, and at all times mentioned herein were, “persons,” as
23 defined by 47 U.S.C. § 153(39).

24 14. At all times relevant Defendants conducted business in the State of
25 California and in the County of Merced, within this judicial district.

26 15. In or about April of 2017, Plaintiff received multiple text messages
27 from Defendants on her cellular telephone, number ending in -3830.

1 16. During this time, Defendants began to use Plaintiff's cellular telephone
2 for the purpose of notifying Plaintiff of the various promotions Defendant offered
3 on their products by sending Plaintiff hyperlinks to Defendant's websites, which
4 qualify as spam advertisements and/or promotional offers, via text messages,
5 including text messages sent to and received by Plaintiff on or about April 2017, and
6 continuing through to September of 2017, from a phone number confirmed to belong
7 to Defendant, 313-131. A true and correct copy of the text messages are attached as
8 "Exhibit A".

9 17. These text messages placed to Plaintiff's cellular telephone were placed
10 via Defendant's *SMS Blasting Platform*, i.e., an "automatic telephone dialing
11 system," ("ATDS") as defined by 47 U.S.C. § 227 (a)(1) as prohibited by 47 U.S.C.
12 § 227 (b)(1)(A).

13 18. The telephone number that Defendants, or their agent called was
14 assigned to a cellular telephone service for which Plaintiff incurs a charge for
15 incoming calls pursuant to 47 U.S.C. § 227 (b)(1).

16 19. These telephone calls constituted calls that were not for emergency
17 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

18 20. Plaintiff was never a customer of Defendants and never provided her
19 cellular telephone number to Defendants for any reason whatsoever. Accordingly,
20 Defendants and their agents never received Plaintiffs prior express consent to receive
21 unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

22 21. These telephone calls by Defendant, or its agents, violated 47 U.S.C. §
23 227(b)(1).

24 **CLASS ACTION ALLEGATIONS**

25 22. Plaintiff brings this action on behalf of herself and on behalf of and all
26 others similarly situated ("the Class").

27 23. Plaintiff represents, and is a member of, the Class, consisting of all
28 persons within the United States who received any unsolicited text messages from

1 Defendants which text message was not made for emergency purposes or with the
2 recipient's prior express consent within the four years prior to the filing of this
3 Complaint.

4 24. Defendants and their employees or agents are excluded from the Class.
5 Plaintiff does not know the number of members in the Class, but believes the Class
6 members number in the hundreds of thousands, if not more. Thus, this matter should
7 be certified as a Class action to assist in the expeditious litigation of this matter.

8 25. Plaintiff and members of the Class were harmed by the acts of
9 Defendants in at least the following ways: Defendants, either directly or through
10 their agents, illegally contacted Plaintiff and the Class members via their cellular
11 telephones by using marketing and text messages, thereby causing Plaintiff and the
12 Class members to incur certain cellular telephone charges or reduce cellular
13 telephone time for which Plaintiff and the Class members previously paid, and
14 invading the privacy of said Plaintiff and the Class members. Plaintiff and the Class
15 members were damaged thereby.

16 26. This suit seeks only damages and injunctive relief for recovery of
17 economic injury on behalf of the Class, and it expressly is not intended to request
18 any recovery for personal injury and claims related thereto. Plaintiff reserves the
19 right to expand the Class definition to seek recovery on behalf of additional persons
20 as warranted as facts are learned in further investigation and discovery.

21 27. The joinder of the Class members is impractical and the disposition of
22 their claims in the Class action will provide substantial benefits both to the parties
23 and to the court. The Class can be identified through Defendants' records or
24 Defendants' agents' records.

25 28. There is a well-defined community of interest in the questions of law
26 and fact involved affecting the parties to be represented. The questions of law and
27 fact to the Class predominate over questions which may affect individual Class
28 members, including the following:

- 1 a) Whether, within the four years prior to the filing of this Complaint,
2 Defendants or their agents sent any text messages to the Class (other
3 than a message made for emergency purposes or made with the prior
4 express consent of the called party) to a Class member using any
5 automatic dialing system to any telephone number assigned to a cellular
6 phone service;
- 7 b) Whether Plaintiff and the Class members were damaged thereby, and
8 the extent of damages for such violation; and
- 9 c) Whether Defendants and their agents should be enjoined from engaging
10 in such conduct in the future.

11 29. As a person that received at least one marketing and text message
12 without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical
13 of the Class. Plaintiff will fairly and adequately represent and protect the interests
14 of the Class in that Plaintiff has no interests antagonistic to any member of the Class.

15 30. Plaintiff and the members of the Class have all suffered irreparable
16 harm as a result of the Defendants' unlawful and wrongful conduct. Absent a class
17 action, the Class will continue to face the potential for irreparable harm. In addition,
18 these violations of law will be allowed to proceed without remedy and Defendants
19 will likely continue such illegal conduct. Because of the size of the individual Class
20 member's claims, few, if any, Class members could afford to seek legal redress for
21 the wrongs complained of herein.

22 31. Plaintiff has retained counsel experienced in handling class action
23 claims and claims involving violations of the Telephone Consumer Protection Act.

24 32. A class action is a superior method for the fair and efficient adjudication
25 of this controversy. Class-wide damages are essential to induce Defendants to
26 comply with federal and California law. The interest of Class members in
27 individually controlling the prosecution of separate claims against Defendants are
28 small because the maximum statutory damages in an individual action for violation

1 of privacy are minimal. Management of these claims is likely to present significantly
2 fewer difficulties than those presented in many class claims.

3 33. Defendants have acted on grounds generally applicable to the Class,
4 thereby making appropriate final injunctive relief and corresponding declaratory
5 relief with respect to the Class as a whole.

6 **FIRST CAUSE OF ACTION**

7 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

8 **47 U.S.C. § 227 ET SEQ.**

9 34. Plaintiff incorporates by reference all of the above paragraphs of this
10 Complaint as though fully stated herein.

11 35. The foregoing acts and omissions of Defendants constitute numerous
12 and multiple negligent violations of the TCPA, including but not limited to each and
13 every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

14 36. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et
15 seq, Plaintiff and The Class are entitled to an award of \$500.00 in statutory damages,
16 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

17 37. Plaintiff and the Class are also entitled to and seek injunctive relief
18 prohibiting such conduct in the future.

19 **SECOND CAUSE OF ACTION**

20 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

21 **TELEPHONE CONSUMER PROTECTION ACT**

22 **47 U.S.C. § 227 ET SEQ.**

23 38. Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.

25 39. The foregoing acts and omissions of Defendants constitute numerous
26 and multiple knowing and/or willful violations of the TCPA, including but not
27 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et
28 seq.

1 40. As a result of Defendants' knowing and/or willful violations of 47
2 U.S.C. § 227 et seq, Plaintiff and The Class are entitled to an award of \$1,500.00 in
3 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
4 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

5 41. Plaintiff and the Class are also entitled to and seek injunctive relief
6 prohibiting such conduct in the future.

7 **PRAYER FOR RELIEF**

8 Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and The
9 Class members the following relief against Defendants:

10 **FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF**
11 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 12 • As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),
13 Plaintiff seeks for himself and each Class member \$500.00 in statutory
14 damages, for each and every violation, pursuant to 47 U.S.C. §
15 227(b)(3)(B).
16 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
17 conduct in the future.
18 • Any other relief the Court may deem just and proper.

19 **SECOND CAUSE OF ACTION FOR KNOWING/WILLFUL VIOLATION OF**
20 **THE TCPA, 47 U.S.C. § 227 ET SEQ.**

- 21 • As a result of Defendants' negligent violations of 47 U.S.C. § 227(b)(1),
22 Plaintiff seeks for himself and each Class member \$1500.00 in statutory
23 damages, for each and every violation, pursuant to 47 U.S.C. §
24 227(b)(3)(B).
25 • Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such
26 conduct in the future.
27 • Any other relief the Court may deem just and proper.

28 **TRIAL BY JURY**

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Exhibit A

CIVIL COVER SHEET

Case 1:17-cv-01618-AWI-SKO Document 1-1 Filed 12/04/17 Page 1 of 2

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

DEEBA ABEDI, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Merced (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Law Offices of Todd M. Friedman, P.C. 21550 Oxnard St., Suite 780, Woodland Hills, CA 91367 Tel: (877) 206-4741

DEFENDANTS

NEW AGE MEDICAL CLINIC PA, and DOES 1-10, inclusive,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES. Includes various legal codes and descriptions.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 47 U.S.C. § 227, et seq. Telephone Consumer Protections Act

Brief description of cause: Junk Text Messages

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 12/04/2017 SIGNATURE OF ATTORNEY OF RECORD /s/Todd M. Friedman

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Case 1:17-cv-01618-AWI-SKO Document 1-1 Filed 12/04/17 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [New Age Medical Clinic Accused of Sending Illegal Text Advertisements](#)
