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11 Attorneys for Plaintiffs David Abitbol and Orlene Nosek and the Putative Class

12 **UNITED STATES DISTRICT COURT**

13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

14 **WESTERN DIVISION**

15
16 DAVID ABITBOL,
17 and ORLENE NOSEK, individually
18 and on behalf of others similarly
19 situated,

20 *Plaintiffs,*

21 v.

22
23 NEXXT, INC., a Delaware
24 Corporation,
25 and DOES 1 through 10, inclusive,

26 *Defendants.*

CASE NO: 2:20-cv-06660

**COMPLAINT FOR VIOLATION
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. VIOLATION OF
THE SECTION 227, ET SEQ.**

CLASS ACTION

DEMAND FOR JURY TRIAL

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Plaintiffs David Abitbol and Orlene Nosek, individually and on behalf all others similarly situated, (referred to hereinafter as “Plaintiffs”), allege as follows against Defendants Nexxt, Inc., a Delaware corporation (referred to hereinafter as “Nexxt”) and DOES 1 through 10, inclusive (collectively referred to hereinafter as “Defendants”):

I. JURISTITION AND VENUE

1. This Court has federal question subject matter pursuant to 28 U.S.C. §§ 1331 and 1337 (commerce) as this action arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. (“TCPA”), a federal statute. (See *Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740, 751-53 (2012); *Brill v. Countrywide Home Loans, Inc.*, 427 F.3d 446 (7th Cir. 2005)).

2. This Court has personal jurisdiction over Defendants and venue is

1 proper this District because Defendants conduct business within this District and
2 have purposefully availed themselves of the laws and markets of the state of
3 California and this District
4

5 **II. INTRODUCTION**

6
7 3. Plaintiffs David Abitbol and Orlene Nosek, individually and on behalf
8 all others similarly situated, bring this action against Defendants Nexxt and Does
9 1-10 to stop Defendants' practice of sending spam text messages to cellular
10 telephones using an automated telephone dialing system, and to obtain redress
11 for all persons injured by its conduct.
12

13 **III. THE PARTIES**

14
15 4. Plaintiff, David Abitbol, is an individual who, at all times mentioned
16 herein, was and is over the age of 18, and who resides in Los Angeles,
17 California.
18

19 5. Plaintiff, Orlene Nosek, is an individual who, at all times mentioned
20 herein, was and is over the age of 18, and who resides in Los Angeles,
21 California.
22

23 6. Defendant Nexxt, Inc., is a corporation organized under the laws of
24 Delaware with its principal place of business at 676 E. Swedesford Road, Suite
25 300, Wayne, Pennsylvania 19087.
26

27 7. The true names and capacities of Defendants Does 1 through 10 are
28

1 currently unknown to Plaintiffs, who allege that Does 1 through 10 are
2 responsible in some manner for the injuries sustained by Plaintiffs as hereinafter
3 alleged. Plaintiffs request leave to file amendments to this complaint alleging the
4 true names and capacities of Does 1 through 10 when the same have been
5 ascertained.
6
7

8 8. Plaintiffs are informed and believe, and on that basis allege, that at all
9 times herein mentioned each of the Defendants was an agent, servant, employee,
10 and/or joint venture of each of the remaining Defendants, and was at all times
11 acting within the course and scope of such agency, service, employment, and/or
12 joint venture, and each Defendant has ratified, approved, and authorized the acts
13 of each of the remaining Defendants with full knowledge of said facts.
14
15
16 ours in any work day.
17

18 9. Defendants, and each of them, aided and abetted, encouraged, and
19 rendered substantial assistance to the other Defendants in breaching their
20 obligations to Plaintiffs as alleged herein. In taking action, as alleged herein, to
21 aid and abet and substantially assist the commissions of these wrongful acts and
22 other wrongdoings complained of, each of the Defendants acted with an
23 awareness of its/his/her primary wrongdoing and realized that its/his/her conduct
24 would substantially assist the accomplishment of the wrongful conduct, wrongful
25 goals, and wrongdoing
26
27
28

1 10. There is a unity of interest between Defendants, and each acts as
2 the alter ego of the other.
3

4 **IV. THE TELEPHONE CONSUMER PROTECTION ACT**

5 **("TCPA") 47 U.S.C. §227**

6
7 11. Congress enacted the TCPA in 1991 in response to a growing
8 number of consumer complaints regarding telemarketing robocalls.

9
10 12. Congress enacted the TCPA to prevent real harm. Congress found
11 that "automated or pre-recorded calls are a nuisance and an invasion of privacy,
12 regardless of the type of call" and decided that "banning" such calls made
13 without consent was "the only effective means of protecting telephone
14 consumers from this nuisance and privacy invasion." Pub. L. No. 102-243 (Dec.
15 20, 1991); *see also Mims v. Arrow Fin. Servs., LLC*, 132 S Ct. 740, 744 (2012)
16 ("The Act bans certain practices invasive of privacy").
17

18
19 13. Consumer complaints about this conduct have only increased since
20 then. "If robocalls were a disease, they would be an epidemic." Rage Against
21 Robocalls, Consumer Reports (July 28, 2015). "Robocalls" are the #1 consumer
22 complaint in America today. The Federal Trade Commission (FTC) and Federal
23 Communications Commission (FCC) regularly cite "unwanted and illegal
24 robocalls" as their number-one complaint category. The FTC received more than
25 1.9 million complaints filed in the first five months of 2017 and about 5.3 million
26
27
28

1 in 2016. The FCC has stated that it gets more than 200,000 complaints about
2 unwanted telemarketing calls each year. These complaints are on top of the
3 complaints each state AG ' s office.
4

5 14. In an effort to curb these unwanted calls, the TCPA regulates, inter
6 alia, the use of automated telephone equipment (a/k/a "autodialers" or
7 "robodialers") to make calls to any cellular telephone number. Specifically, the
8 plain language of section 227(b)(1)(A)(iii) prohibits the use of autodialers to
9 make any call to a wireless number in the absence of an emergency or the prior
10 express consent of the called party.
11
12

13 15. In 2012, the FCC prohibited "any telephone call that includes or
14 introduced an advertisement or constitutes telemarketing, using an automatic
15 telephone dialing system or an artificial or prerecorded voice, to any [-cellular
16 telephone number], other than a call made with the prior express written consent
17 of the called party[.]" 47 C.F.R. § 64.1200(a)(2). This prior express written
18 consent requirement became effective on October 16, 2013.
19
20
21

22 V. FACTUAL ALLEGATIONS

23 16. Plaintiff Abitbol is a non-subscriber customary user of a cellular
24 telephone number on Plaintiff Nosek's account. Plaintiff Nosek pays the cell
25 phone bills for her and Plaintiff Abitbol's cell phone usage.
26
27

28 17. Plaintiff Abitbol regularly carries and uses the cellular telephone on

1 which the unsolicited text message calls were received.

2 18. On multiple occasions, Defendant Nexxt sent unsolicited text
3 messages to Plaintiff Abitbol on his cell phone, the last four digits of which are
4 6443.
5

6 19. Plaintiff Abitbol received the following text message from 34975 on
7 September 11, 2019, at 2:03 PM: “New job match for Business Intelligence in
8 91101. Click here to view <http://work3.net/l/jrm1u>”. **(Exhibit A)**
9
10

11 20. Plaintiff Abitbol received the following text message from 34975
12 On January 22, 2020, at 2:03 PM: “New job match for Business Intelligence in
13 90021. Click here to view <http://apply.net/l/m8yts>”. **(Exhibit B)**
14

15 21. Plaintiff Abitbol received the following text message from 34975
16 on February 11, 2020, at 2:12 PM: “New job match for Business Intelligence in
17 90079. Click here to view <http://apply.net/l/ns26g>”. **(Exhibit B)**
18

19 22. Plaintiff Abitbol received the following text message from 34975
20 on March 3, 2020 at 2:03 PM: “New job match for Business Intelligence in
21 90079. Click here to view <http://work3.net/l/od9vq>”. **(Exhibit B)**
22

23 23. Plaintiff Abitbol received the following text message from 34975
24 on March 23, 2020 at 2:04 PM: “New job match for Data Architect in 91301.
25 Click here to view <http://mobil.us/l/ouqad>”. **(Exhibit B)**
26

27 24. Plaintiff Abitbol received the following text message from 34975 on
28

1 May 12, 2020 at 2:04 PM: “New job match for Data Architect in 91501. Click
2 here to view <http://work3.net/l/pgfvq>”. **(Exhibit B)**
3

4 25. Plaintiff Abitbol received the following text message from 34975 on
5 July 13, 2020 at 2:08 PM: “New job match for Data Architect in 91367. Click
6 here to view <http://mobi1.us/l/gd4pp>”. **(Exhibit C)**
7

8 26. Plaintiff Abitbol received the following text message from 34975 on
9 July 21, 2020 at 4:42 PM: “New job match for Data Architect in 90401. Click
10 here to view <http://work3.net/l/goid6>”. **(Exhibit C)**
11

12 27. On information and belief, based on the non-personalized nature of
13 the messages, the fact that each message begins in the identical manner, and the
14 fact that most were sent at the same hour and minute of the day, the messages
15 were sent using automated telephone dialing equipment.
16
17

18 28. Plaintiffs Abitbol and Nosek have never done business with Nexxt,
19 have not provided their cell numbers to it, have not requested any information
20 from it, and have not consented to any calls or text messages from Nexxt.
21

22 29. The SMS short code 34975 is registered to Nexxt.

23 30. Discovery may reveal additional text message calls as well.

24 31. Defendant Nexxt is responsible for making or causing the making
25 of the text message calls to Plaintiff Abitbol.
26

27 32. Nexxt, or an agent on its behalf, operates a call center, where
28

1 automated equipment is used to place large numbers of telemarketing calls and
2 text message calls. The equipment has the present capacity to store or produce
3 telephone numbers to be called, using a random or sequential number generator;
4 and to dial such numbers.
5

6
7 33. By calling Plaintiff Abitbol, Defendants caused Plaintiff Abitbol and
8 the putative class members actual harm, including the aggravation and nuisance
9 that necessarily accompanies the receipt of unsolicited and harassing telephone
10 calls, consumption of electricity in cost per-kilowatt required to recharge the cell
11 phones, consumption of money or purchased blocks of calls, and wear and tear
12 on telephone equipment. The text message calls took time to receive and Plaintiff
13 Abitbol's statutory right of privacy was invaded.
14
15

16
17 34. The FCC has also recognized that wireless customers are charged for
18 incoming calls whether they pay in advance or after the minutes are used. In re
19 Rules and Regulations Implementing the Telephone Consumer Protection Act of
20 1991, CG Docket No. 02-278, Report and Order, 18 FCC Red. 14014, 14115
21 (¶165) (2003).
22

23
24 35. Defendant Nexxt is responsible for making or causing the making of
25 unsolicited, automated telemarketing and prerecorded and/or artificial voice
26 calls and text message calls is to offer job opportunities.
27

28 36. Defendant Nexxt offers Text2Hire, a technology established to target

1 job candidates via text message with job opportunities.

2 37. Defendant Nexxt works with recruiters to find candidates to fulfill
3 employment needs. Defendant Nexxt posts job opportunities on its website,
4 www.nexxt.com. Defendant Nexxt derives economic benefit based on marketing
5 and recruitment campaigns to reach job candidates.
6
7

8 38. Defendant Nexxt sends unsolicited, automated telemarketing and pre-
9 recorded and/or artificial voice calls and text message calls as a marketing
10 method for recruiting job candidates.
11

12 39. On information and belief, Defendants have sent automated text
13 messages calls to cellular phones of at least 40 other persons.
14

15 40. There is no reasonable means for Plaintiffs or other recipients of
16 Defendants' messages to avoid receiving them.
17

18 41. The TCPA was enacted to protect consumers from unsolicited phone
19 calls and text message calls exactly like those alleged in this case.
20

21 42. The text message calls were made to consumers who never requested to
22 receive them, never engaged in any interaction with Defendants and are made on
23 a repeat basis without consent.
24

25 43. Defendants either negligently or willfully violated the rights of
26 Plaintiffs and other recipients in placing the calls or arranging for the calls to be
27 made.
28

VI. CAUSE OF ACTION-
VIOLATION OF TELEPHONE CONSUMER PROTECTION ACT
(“TCPA”) 47 U.S.C. §227, ET SEQ.

44. Plaintiffs incorporate by reference paragraphs 1-43 as if set forth herein in their entirety.

45. The TCPA provides as follows at 47 U.S.C. § 227(b):

“§ 227. Restrictions on use of telephone equipment

... (b) Restrictions on use of automated telephone equipment

(1) Prohibitions. It shall be unlawful for any person within the United States, or any person outside 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 any automatic telephone dialing system or 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;”

1 46. The TCPA, 47 U.S.C. § 227(b)(3) further provides:

2 “Private right of action. A person or entity may, if otherwise permitted by
3 the laws or rules of court of a State, bring in an appropriate court of that
4 State-
5

6 (A) an action based on a violation of this subsection or the
7 regulations prescribed under this subsection to enjoin such violation
8

9 (B) an action to recover for actual monetary loss from such a
10 violation, or to receive \$500 in damages for each such violation,
11 whichever is greater, or
12

13 (C) both such actions.
14

15 If the Court finds that the defendant willfully or knowingly violated this
16 subsection or the regulations prescribed under this subsection, the court
17 may, in its discretion, increase the amount of the award to an amount equal
18 to not more than 3 times the amount available under the subparagraph (B)
19 of this paragraph.”
20
21

22 47. Defendants and/or their agents violated the TCPA by using equipment
23 that placed automated text message calls to Plaintiffs’ and the putative class
24 member's cell phones.
25

26 48. Defendants made unsolicited automated telemarketing text message
27
28

1 calls to cellular telephone numbers belonging to Plaintiffs and other members of
2 the class.

3
4 49. By making unsolicited text message calls to Plaintiffs and the class
5 members, using an automated dialing system and without prior express consent,
6 Defendants violated 47 U.S.C. §227(b)(1)(A)(iii).
7

8 **VII. CLASS ALLEGATIONS**

9 50. Plaintiffs and the class members are entitled to statutory damages.
10

11 51. Plaintiffs and the putative class members suffered actual damages in
12 the form of monies paid to receive the unsolicited text messages and robocalls,
13 and their statutory right of privacy was invaded.
14

15 52. Defendants should be enjoined from committing similar violations in
16 the future.
17

18 53. **Class Definition:** Pursuant to Fed. R. Civ. P. 23(a) and (b)(3),
19 Plaintiffs bring this action on behalf of a nationwide class of similarly situated
20 individuals (“the Class”), defined as follows: (a) all persons who, on or after a
21 date four years prior to the filing of this action (28 U.S.C. § 1658), (b) received a
22 text message sent by or on behalf of Defendant Nexxt, Inc. (c) placed using an
23 automated dialer.
24
25

26 54. Plaintiffs reserve the right to modify the class definition as the contours
27 and parameters of the class become apparent through discovery in this matter.
28

1 55. Excluded from the Class are: (1) Defendant Nexxt, Inc., Defendant's
2 agents, subsidiaries, parents, successors, predecessors, and any entity in which
3 Nexxt, Inc., or its parents have a controlling interest, and those entities' current
4 and former employees, officers, and directors; (2) the Judge to whom this case is
5 assigned and the Judge's immediate family; (3) any person who executes and
6 files a timely request for exclusion from the Class; (4) any persons who have had
7 their claims in this matter finally adjudicated and/or otherwise released; and (5)
8 the legal representatives, successors and assigns of any such excluded person.
9
10

11 56. **Direct Harm:** Plaintiffs and the members of the class were harmed by
12 Defendants' acts in at least the following ways: Defendants, either directly or
13 through agents, illegally contacted Plaintiffs and the Class Members via their
14 cellular telephones by using an "autodialer" or "robodialer," thereby causing
15 Plaintiffs and the members of each class to incur certain telephone charges or
16 reduce cellular telephone time for which Plaintiffs and the Class members
17 previously paid; and Plaintiffs and Class members' privacy were invaded.
18
19
20
21

22 57. **Numerosity:** The exact number of class members is unknown and not
23 available to Plaintiffs at this time, but it is clear that individual joinder is
24 impracticable. Plaintiffs allege on information and belief, that there are more
25 than 40 members of the class. Class members can be identified through
26 Defendants' and/or their agents' records, or by other means.
27
28

1 58. **Typicality:** Plaintiffs' claims are typical of the claims of other
2 members of the classes, in that Plaintiffs and the class members sustained
3 damages arising out of Defendants' uniform wrongful conduct, including the
4 making of unsolicited telephone calls.
5

6 59. **Adequacy of Representation:** Plaintiffs will fairly and adequately
7 represent and protect the interests of the classes, and have retained counsel
8 competent and experienced in complex class actions. Plaintiffs have no interest
9 antagonistic to those of the class members, and Defendants have no defenses
10 unique to Plaintiffs. The questions of law and fact common to the proposed
11 Class predominate over any questions affecting only individual members of the
12 Class.
13
14
15

16 60. **Commonality and Predominance:** There are questions of law and fact
17 common to the claims of Plaintiffs and the class members, and those questions
18 predominate over any questions that may affect individual members of the class.
19 These include:
20
21

- 22 a. Whether the equipment Defendants used to send the messages
23 in question was an automatic telephone dialing system as
24 defined by the TCPA;
25
26 b. Whether Defendants systematically made automated calls to
27 persons without prior express consent to receive such
28

1 telephone calls;

2 c. Whether Defendants violated the TCPA;

3
4 d. Whether class members are entitled to damages, including
5 treble damages based on the willfulness of Defendants'
6 conduct.
7

8 61. **Superiority:** Class proceedings are superior to all other available
9 methods for the fair and efficient adjudication of this controversy because joinder
10 of all parties is impracticable. The damages suffered by the individual members
11 of the class will likely be relatively small, especially given the burden and
12 expense of individual prosecution of the complex litigation necessitated by
13 Defendants' actions. Thus, it would be virtually impossible for the individual
14 members of the class to obtain effective relief from Defendants' misconduct.
15 Even if members of the class could sustain such individual litigation, it would
16 still not be preferable to a class action, because individual litigation would
17 increase the delay and expense to all parties. By contrast, a class action presents
18 far fewer management difficulties and provides the benefits of single
19 adjudication, economy of scale, and comprehensive supervision by a single
20 Court. Economies of time, effort and expense will be fostered and uniformity of
21 decisions ensured.
22
23
24
25
26
27

28 62. **Notice:** The names, addresses and/or telephone numbers of the Class

1 Members are available from Defendants, and notice should be provided to the
2 members of the Class via text or, if addresses are ascertainable, via first class
3 mail to the last address known, as provided by the Defendants as soon as
4 possible.
5

6
7 **63. Uniform Relief Necessary:** This class action is appropriate for class
8 certification because Defendants have acted or refused to act on grounds
9 generally applicable to the Class as a whole, thereby requiring the Court's
10 imposition of uniform relief to ensure compatible standards of conduct toward
11 the Class and making an award of damages.
12

13
14 **64.** Management of this class action is likely to present significantly fewer
15 difficulties than those presented in many class actions, e.g., for securities fraud.
16

17 **VIII. PRAYER FOR RELIEF**

18 **65.** WHEREFORE, Plaintiffs respectfully request that the Court enter
19 judgment in favor of Plaintiffs and the class as follows:
20

- 21 a. An order certifying this matter as a class action with Plaintiffs as
22 Class Representatives, and designating Edelman, Combs, Lattuner
23 & Goodwin, LLC and Lexicon Law, PC as Class Counsel;
24
- 25 b. An award of statutory damages for each and every violation;
26
- 27 c. Actual damages;
28
- d. An injunction restraining the conduct complained of;

1 e. Costs of suit; and

2 f. For such other and further relied as the Court deems necessary, just
3 and proper.
4

5 **IX. DEMAND FOR JURY TRIAL**

6 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs, individually and
7 on behalf of all others similarly situated, respectfully request a trial by jury as to
8 each and every claim for which they are so entitled.
9
10

11 DATED: July 24, 2020

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NOTICE OF ASSIGNMENT

Please be advised that all rights relating to attorney's fees have been assigned to counsel.

Date: July 24, 2020

/s/ Tiffany N. Buda

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DOCUMENT PRESERVATION DEMAND

Plaintiffs hereby demand that Defendants take affirmative steps to preserve all recordings, data, documents, and all other tangible things that relate to plaintiffs, the events described herein, any third party associated with any telephone call, campaign, account, sale or file associated with Plaintiffs. These materials are likely very relevant to the litigation of this claim. If Defendants are aware of any third party that has possession, custody, or control of any such materials, Plaintiffs demand that Defendants request that such third party also take steps to preserve the materials. This demand shall not narrow the scope of any independent document preservation duties of the Defendants.

Date: July 24, 2020

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Exhibit A

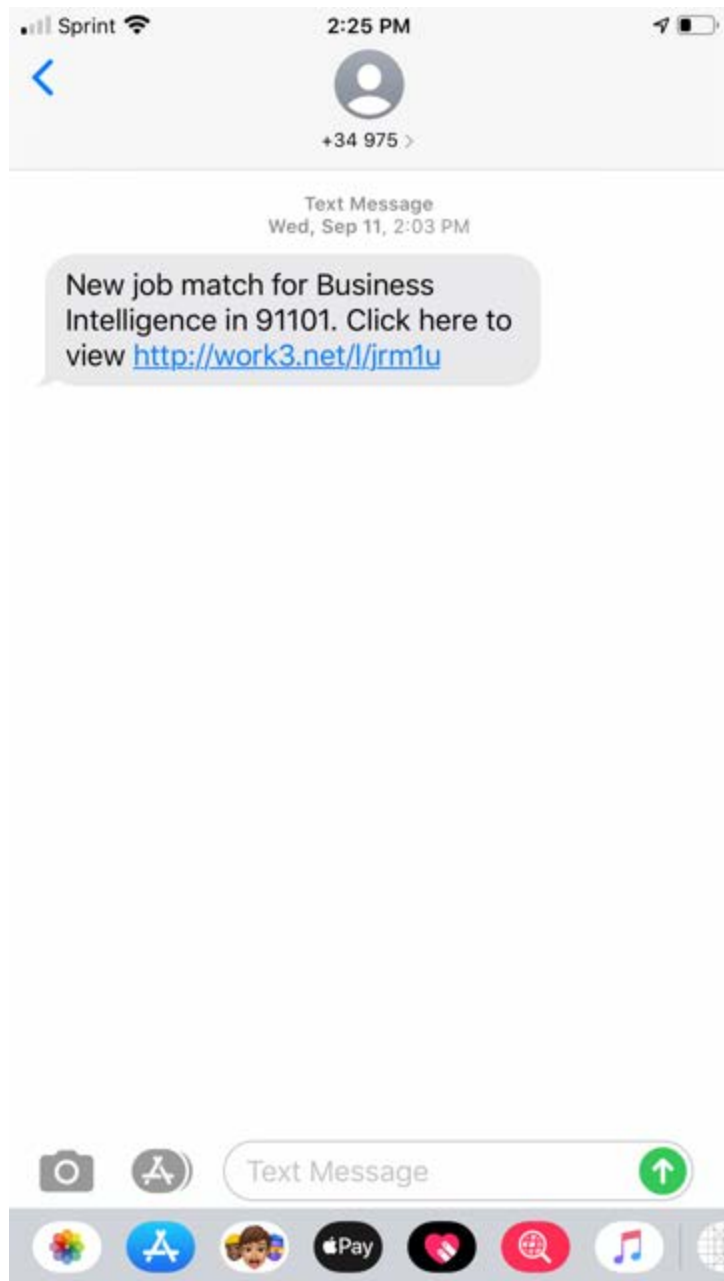


Exhibit B

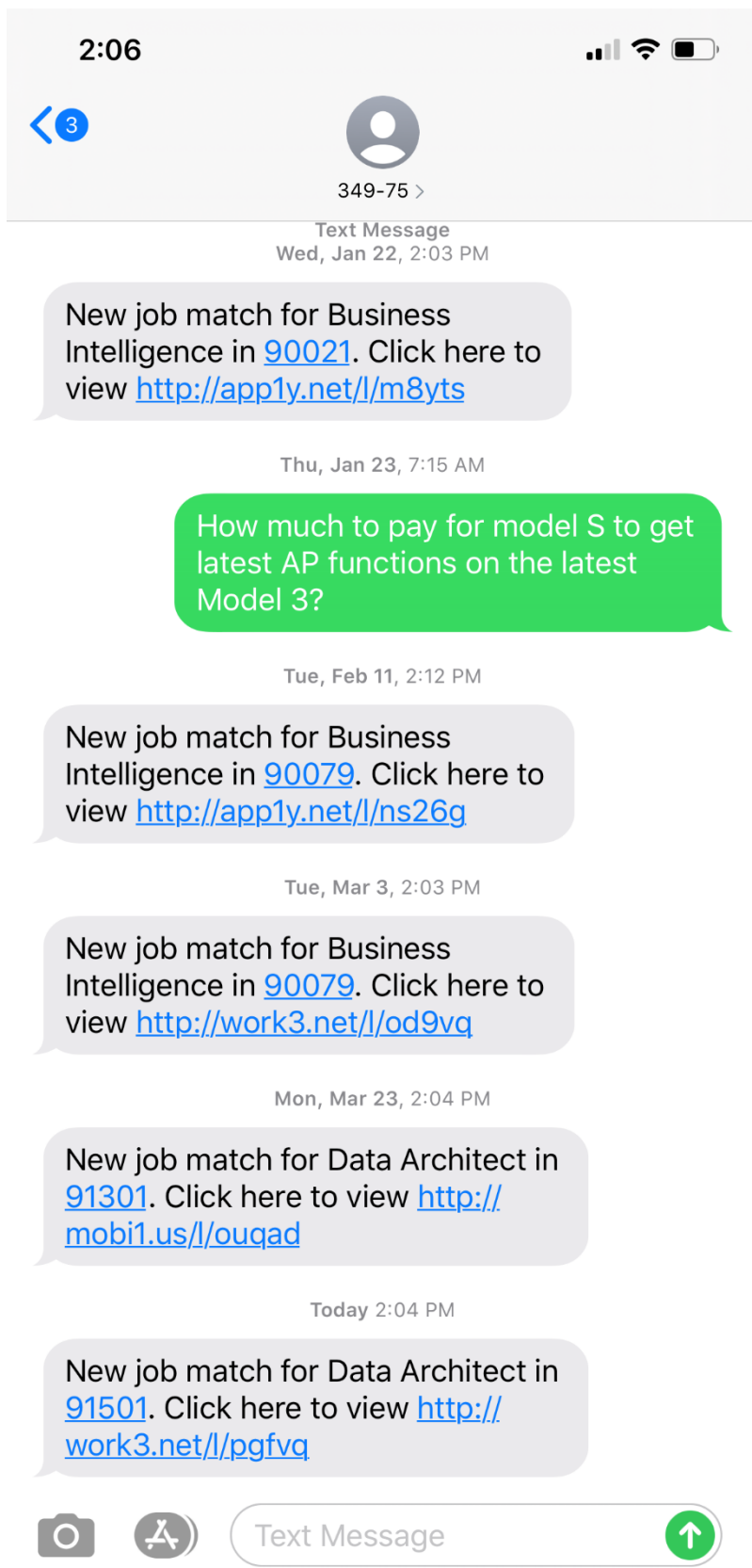
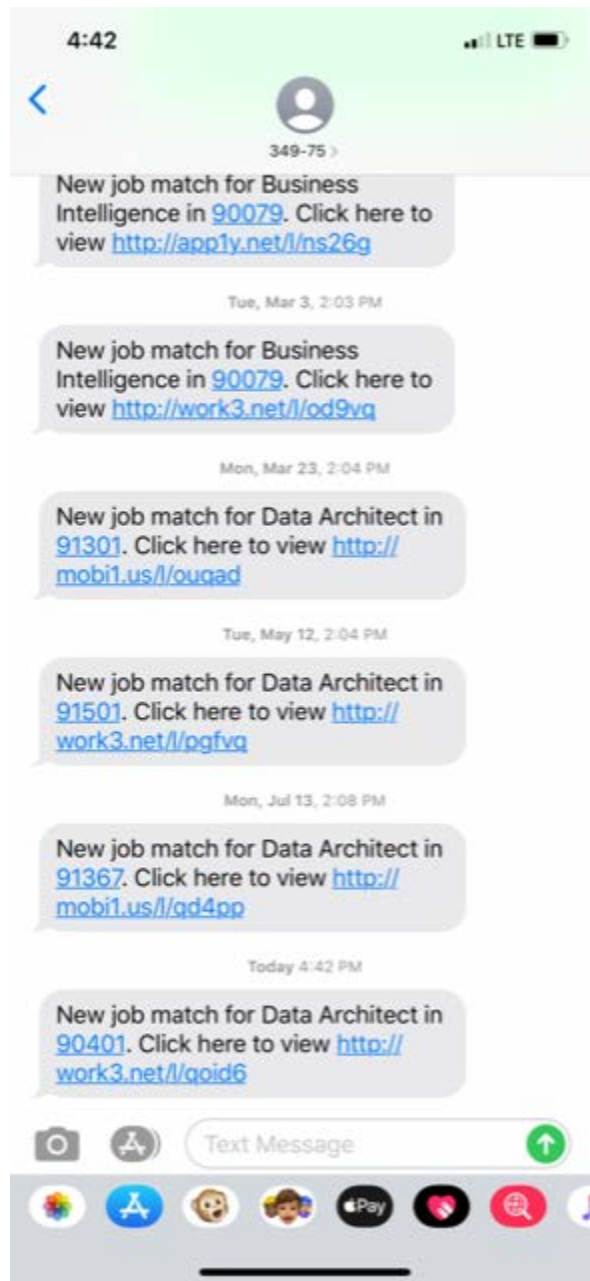


Exhibit C



ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Claims Nexxt, Inc. Sent Unlawful Text Messages Without Permission](#)
