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14 *Counsel for Plaintiff and Proposed Class*

15
16 **IN THE UNITED STATES DISTRICT COURT**
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

17
18 TAYLOR BASILE, individually and on behalf of all
19 others similarly situated,

20 *Plaintiff,*

21 vs.

22 JENNY CRAIG, INC., a California Corporation,

23 *Defendant.*
24 _____/

Case No. **'19CV0788 LAB BGS**

CLASS ACTION

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

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2 1. Plaintiff, Taylor Basile, brings this action against Defendant, Jenny Craig, Inc., to
3 secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. §
4 227.

NATURE OF THE ACTION

5
6
7 2. This is a putative class action pursuant to the Telephone Consumer Protection Act, 47
8 U.S.C. § 227 et seq., (the “TCPA”).

9 3. Defendant is a company that deals in providing weight loss, weight management, and
10 nutrition services for individuals.

11 4. This case arises from Defendant’s unauthorized text messages to cellular subscribers
12 who never provided Defendant with prior express consent, as well as cellular subscribers who
13 expressly requested not to receive Defendant’s text messages.

14 5. As a result, Defendant caused thousands of text messages to be sent to the cellular
15 telephones of Plaintiff and Class Members who either never provided Defendant with consent to
16 contact them or who had revoked any prior express consent.

17 6. Defendant has been sued before for violating the TCPA and was aware of the
18 restrictions imposed upon it by the TCPA.

19 7. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s illegal conduct,
20 which has resulted in the invasion of privacy, harassment, aggravation, and disruption of the daily
21 life of thousands of individuals. Plaintiff also seeks statutory damages on behalf of herself and
22 members of the class, and any other available legal or equitable remedies.
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JURISDICTION AND VENUE

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2 8. This Court has federal question subject matter jurisdiction over this action pursuant
3 to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection Act, 47 U.S.C.
4 § 17 227 (“TCPA”).

5
6 9. The Court has personal jurisdiction over Defendant and venue is proper in this District
7 because Defendant is headquartered here, and because Defendant’s unauthorized marketing scheme
8 was directed by Defendant from this District, including to Plaintiff.

PARTIES

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10 10. Plaintiff is a natural person who, at all times relevant to this action, was a resident of
11 Nassau County, New York.

12
13 11. Defendant is a national corporation whose headquarters is located at 5770 Fleet Street,
14 Carlsbad, CA 92008-9446. Defendant directs, markets, and provides its business activities
15 throughout the State of Florida.

THE TCPA

16
17 12. The TCPA prohibits: (1) any person from calling a cellular telephone number; (2) using
18 an automatic telephone dialing system; (3) without the recipient’s prior express consent. 47 U.S.C.
19 § 227(b)(1)(A).
20

21 13. The TCPA defines an “automatic telephone dialing system” (“ATDS”) as “equipment
22 that has the capacity - (A) to store or produce telephone numbers to be called, using a random or
23 sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1).
24

25 14. In an action under the TCPA, a plaintiff must only show that the defendant “called a
26 number assigned to a cellular telephone service using an automatic dialing system or prerecorded
27 voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755
28 F.3d 1265 (11th Cir. 2014).

1 15. The Federal Communications Commission (“FCC”) is empowered to issue rules and
2 regulations implementing the TCPA. According to the FCC’s findings, calls in violation of the
3 TCPA are prohibited because, as Congress found, automated or prerecorded telephone calls are a
4 greater nuisance and invasion of privacy than live solicitation calls, and such calls can be costly and
5 inconvenient. The FCC also recognized that wireless customers are charged for incoming calls
6 whether they pay in advance or after the minutes are used. *Rules and Regulations Implementing the*
7 *Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd
8 14014 (2003).

9
10 16. In 2012, the FCC issued an order tightening the restrictions for automated
11 telemarketing calls, requiring “prior express **written** consent” for such calls to wireless numbers.
12 *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830,
13 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

14
15 17. To obtain express written consent for telemarketing calls, a defendant must establish
16 that it secured the plaintiff’s signature in a form that gives the plaintiff a “‘clear and conspicuous
17 disclosure’ of the consequences of providing the requested consent....and having received this
18 information, agrees unambiguously to receive such calls at a telephone number the [plaintiff]
19 designates.” *In re Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830,
20 1837 ¶ 18, 1838 ¶ 20, 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

21
22 18. The TCPA regulations promulgated by the FCC define “telemarketing” as “the
23 initiation of a telephone call or message for the purpose of encouraging the purchase or rental of,
24 or investment in, property, goods, or services.” 47 C.F.R. § 64.1200(f)(12). In determining whether
25 a communication constitutes telemarketing, a court must evaluate the ultimate purpose of the
26 communication. *See Golan v. Veritas Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).
27
28

1 19. “Neither the TCPA nor its implementing regulations ‘require an explicit mention of a
2 good, product, or service’ where the implication of an improper purpose is ‘clear from the context.’”
3 *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918 (9th Cir. 2012)).

4 20. “‘Telemarketing’ occurs when the context of a call indicates that it was initiated and
5 transmitted to a person for the purpose of promoting property, goods, or services.” *Golan*, 788 F.3d
6 at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. § 64.1200(f)(12); *In re Rules and Regulations*
7 *Implementing the Telephone Consumer Protection Act of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL
8 21517853, at *49).

9 21. The FCC has explained that calls motivated in part by the intent to sell property, goods,
10 or services are considered telemarketing under the TCPA. *See In re Rules and Regulations Implementing*
11 *the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶¶ 139-142 (2003). This is true
12 whether call recipients are encouraged to purchase, rent, or invest in property, goods, or services
13 during the call *or in the future*. *Id.*

14 22. In other words, offers “that are part of an overall marketing campaign to sell property,
15 goods, or services constitute” telemarketing under the TCPA. *See In re Rules and Regulations*
16 *Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014, ¶ 136 (2003).

17 23. If a call is not deemed telemarketing, a defendant must nevertheless demonstrate that
18 it obtained the plaintiff’s prior express consent. *See In the Matter of Rules and Regulaions Implementing*
19 *the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961, 7991-92 (2015) (requiring express consent “for
20 non-telemarketing and non-advertising calls”).

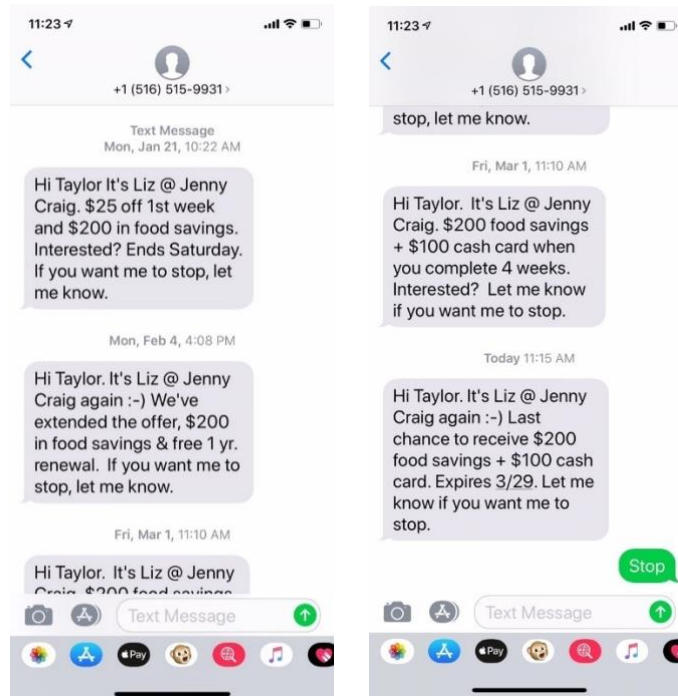
21 24. Further, the FCC has issued rulings and clarified that consumers are entitled to the
22 same consent-based protections for text messages as they are for calls to wireless numbers. *See*
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1 *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009) (The FCC has determined that a
2 text message falls within the meaning of “to make any call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v.*
3 *Quality Res., Inc.*, 2014 WL 6757978, at *3 (N.D. Ill. Dec. 1, 2014) (Defendant bears the burden of
4 showing that it obtained Plaintiff’s prior express consent before sending him the **text message**).
5 (emphasis added).
6

7 25. As recently held by the United States Court of Appeals for the Ninth Circuit:
8 “Unsolicited telemarketing phone calls or text messages, by their nature, invade the privacy and
9 disturb the solitude of their recipients. A plaintiff alleging a violation under the TCPA ‘need not
10 allege any *additional* harm beyond the one Congress has identified.” *Van Patten v. Vertical Fitness*
11 *Grp.*, No. 14-55980, 2017 U.S. App. LEXIS 1591, at *12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc.*
12 *v. Robins*, 136 S. Ct. 1540, 1549 (2016) (emphasis original)).
13

14 **FACTS**

15 26. Beginning on or about January 21, 2019, Defendant sent the following telemarketing
16 text messages to Plaintiff’s cellular telephone number ending in 0999 (the “0999 Number”):
17



1
2 27. Defendant's text messages were transmitted to Plaintiff's cellular telephone, and within
3 the time frame relevant to this action.

4 28. Defendant's text messages constitute telemarketing because they encouraged the
5 future purchase or investment in property, goods, or services, i.e., selling Plaintiff weight loss, weight
6 management, and nutrition services.

7 29. The information contained in the text message advertises Defendant's various specials
8 and discounts, which Defendant sends to promote its business.

9 30. Plaintiff received the subject texts within this judicial district and, therefore,
10 Defendant's violation of the TCPA occurred within this district. Upon information and belief,
11 Defendant caused other text messages to be sent to individuals residing within this judicial district.

12 31. At no point in time did Plaintiff provide Defendant with her express written consent
13 to be contacted using an ATDS.

14 32. Plaintiff is the subscriber and sole user of the 0999 Number, and is financially
15 responsible for phone service to the 0999 Number.

16 33. Plaintiff has been registered with the national do-not-call registry since February 21,
17 2008.

18 34. The impersonal and generic nature of Defendant's text message, demonstrates that
19 Defendant utilized an ATDS in transmitting the messages. *See Jenkins v. LL Atlanta, LLC*, No. 1:14-
20 cv-2791-WSD, 2016 U.S. Dist. LEXIS 30051, at *11 (N.D. Ga. Mar. 9, 2016) ("These assertions,
21 combined with the generic, impersonal nature of the text message advertisements and the use of a
22 short code, support an inference that the text messages were sent using an ATDS.") (citing *Legg v.*
23 *Voice Media Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D. Fla. 2014) (plaintiff alleged facts sufficient to
24 infer text messages were sent using ATDS; use of a short code and volume of mass messaging
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1 alleged would be impractical without use of an ATDS); *Kramer v. Autobyte, Inc.*, 759 F. Supp. 2d 1165,
2 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants used an ATDS where messages were
3 advertisements written in an impersonal manner and sent from short code); *Hickey v. Voxernet LLC*,
4 887 F. Supp. 2d 1125, 1130; *Robbins v. Coca-Cola Co.*, No. 13-CV-132-IEG NLS, 2013 U.S. Dist.
5 LEXIS 72725, 2013 WL 2252646, at *3 (S.D. Cal. May 22, 2013) (observing that mass messaging
6 would be impracticable without use of an ATDS)).
7

8 35. The text messages originated from telephone number 516-515-9931, a number which
9 upon information and belief is owned and operated by Defendant.

10 36. The number used by Defendant (516-515-9931) is known as a "long code," a standard
11 10-digit phone number that enabled Defendant to send SMS text messages *en masse*, while deceiving
12 recipients into believing that the message was personalized and sent from a telephone number
13 operated by an individual.
14

15 37. Long codes work as follows: Private companies known as SMS gateway providers
16 have contractual arrangements with mobile carriers to transmit two-way SMS traffic. These SMS
17 gateway providers send and receive SMS traffic to and from the mobile phone networks' SMS
18 centers, which are responsible for relaying those messages to the intended mobile phone. This allows
19 for the transmission of a large number of SMS messages to and from a long code.
20

21 38. Specifically, upon information and belief, Defendant utilized a combination of
22 hardware and software systems to send the text messages at issue in this case. The systems utilized
23 by Defendant have the capacity to store telephone numbers using a random or sequential generator,
24 and to dial such numbers from a list without human intervention.
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1 39. Defendant's unsolicited text messages caused Plaintiff actual harm, including invasion
2 of her privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion.
3 Defendant's text messages also inconvenienced Plaintiff and caused disruption to her daily life.

4 **CLASS ALLEGATIONS**

5 **PROPOSED CLASS**

6
7 40. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23, on behalf of
8 herself and all others similarly situated.

9 41. Plaintiff brings this case on behalf of a Class defined as follows:

10
11 **No Consent Class:** All persons who from four years prior to
12 the filing of this action (1) were sent a text message by or on
13 behalf of Defendant, (2) using an automatic telephone
14 dialing system, (3) for the purpose of soliciting their
15 purchase of a Defendant membership, and (4) for whom
16 Defendant claims (a) it did not obtain prior express written
17 consent, or (b) it obtained prior express written consent in
18 the same manner as Defendant claims it supposedly
19 obtained prior express written consent to call the Plaintiff.

20
21 **Do Not Call Registry Class:** All persons in the United States
22 who from four years prior to the filing of this action (1) were sent
23 a text message by or on behalf of Defendant; (2) more than one
24 time within any 12-month period; (3) where the person's
25 telephone number had been listed on the National Do Not Call
26 Registry for at least thirty days; (4) for the purpose of selling
27 Defendant's products and services; and (5) for whom
28 Defendant claims (a) it did not obtain prior express written
consent, or (b) it obtained prior express written consent in the
same manner as Defendant claims it supposedly obtained prior
express written consent to call the Plaintiff.

29 42. Defendant and its employees or agents are excluded from the Class. Plaintiff does not
30 know the number of members in the Class, but believes the Class members number in the several
31 thousands, if not more.

1 **NUMEROSITY**

2 43. Upon information and belief, Defendant has placed automated and/or prerecorded
3 calls to cellular telephone numbers belonging to thousands of consumers throughout the United
4 States without their prior express consent. The members of the Class, therefore, are believed to be
5 so numerous that joinder of all members is impracticable.
6

7 44. The exact number and identities of the Class members are unknown at this time and
8 can only be ascertained through discovery. Identification of the Class members is a matter capable
9 of ministerial determination from Defendant's call records.

10 **COMMON QUESTIONS OF LAW AND FACT**

11 45. There are numerous questions of law and fact common to the Class which
12 predominate over any questions affecting only individual members of the Class. Among the
13 questions of law and fact common to the Class are:
14

- 15 (1) Whether Defendant made non-emergency calls to Plaintiff's and Class
16 members' cellular telephones using an ATDS;
17 (2) Whether Defendant can meet its burden of showing that it obtained prior
18 express written consent to make such calls;
19 (3) Whether Defendant's conduct was knowing and willful;
20 (4) Whether Defendant is liable for damages, and the amount of such damages;
21 and
22 (5) Whether Defendant should be enjoined from such conduct in the future.
23

24 46. The common questions in this case are capable of having common answers. If
25 Plaintiff's claim that Defendant routinely transmits text messages to telephone numbers assigned to
26 cellular telephone services is accurate, Plaintiff and the Class members will have identical claims
27 capable of being efficiently adjudicated and administered in this case.
28

1 **TYPICALITY**

2 47. Plaintiff's claims are typical of the claims of the Class members, as they are all based
3 on the same factual and legal theories.

4 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

5 48. Plaintiff is a representative who will fully and adequately assert and protect the interests
6 of the Class, and has retained competent counsel. Accordingly, Plaintiff is an adequate representative
7 and will fairly and adequately protect the interests of the Class.
8

9 **PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE**

10 49. A class action is superior to all other available methods for the fair and efficient
11 adjudication of this lawsuit, because individual litigation of the claims of all members of the Class is
12 economically unfeasible and procedurally impracticable. While the aggregate damages sustained by
13 the Class are in the millions of dollars, the individual damages incurred by each member of the Class
14 resulting from Defendant's wrongful conduct are too small to warrant the expense of individual
15 lawsuits. The likelihood of individual Class members prosecuting their own separate claims is
16 remote, and, even if every member of the Class could afford individual litigation, the court system
17 would be unduly burdened by individual litigation of such cases.
18

19 50. The prosecution of separate actions by members of the Class would create a risk of
20 establishing inconsistent rulings and/or incompatible standards of conduct for Defendant. For
21 example, one court might enjoin Defendant from performing the challenged acts, whereas another
22 may not. Additionally, individual actions may be dispositive of the interests of the Class, although
23 certain class members are not parties to such actions.
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COUNT I
Violations of the TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)

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3 51. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

4 52. It is a violation of the TCPA to make “any call (other than a call made for emergency
5 purposes or made with the prior express consent of the called party) using any automatic telephone
6 dialing system ... to any telephone number assigned to a ... cellular telephone service” 47 U.S.C.
7 § 227(b)(1)(A)(iii).

8
9 53. Defendant – or third parties directed by Defendant – used equipment having the
10 capacity to dial numbers without human intervention to make non-emergency telephone calls to the
11 cellular telephones of Plaintiff and the other members of the Class defined below.

12
13 54. These calls were made without regard to whether or not Defendant had first obtained
14 express permission from the called party to make such calls. In fact, Defendant did not have prior
15 express consent to call the cell phones of Plaintiff and the other members of the putative Class when
16 its calls were made.

17
18 55. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by using an
19 automatic telephone dialing system to make non-emergency telephone calls to the cell phones of
20 Plaintiff and the other members of the putative Class without their prior express written consent.

21 56. Defendant knew that it did not have prior express consent to make these calls, and
22 knew or should have known that it was using equipment that at constituted an automatic telephone
23 dialing system. The violations were therefore willful or knowing.

24
25 57. As a result of Defendant’s conduct and pursuant to § 227(b)(3) of the TCPA, Plaintiff
26 and the other members of the putative Class were harmed and are each entitled to a minimum of
27 \$500.00 in damages for each violation. Plaintiff and the class are also entitled to an injunction against
28 future calls. *Id.*

COUNT II

**Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)
(On Behalf of Plaintiff and the Class)**

58. Plaintiff re-allege and incorporate paragraphs 1-50 as if fully set forth herein.

59. At all times relevant, Defendant knew or should have known that its conduct as alleged herein violated the TCPA.

60. Defendant knew that it did not have prior express consent to make these calls, and knew or should have known that its conduct was a violation of the TCPA.

61. Because Defendant knew or should have known that Plaintiff and Class Members had not given prior express consent to receive its autodialed calls, the Court should treble the amount of statutory damages available to Plaintiff and the other members of the putative Class pursuant to § 227(b)(3) of the TCPA.

62. As a result of Defendant's violations, Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT III

**Violation of the TCPA, 47 U.S.C. § 227
(On Behalf of Plaintiff and the Do Not Call Registry Class)**

63. Plaintiff repeats and realleges the paragraphs 1 through 50 of this Complaint and incorporates them by reference herein.

64. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c), provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a] residential telephone subscriber who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the federal government."

1 65. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable to any person
2 or entity making telephone solicitations or telemarketing calls to wireless telephone numbers.”¹

3 66. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall initiate any
4 call for telemarketing purposes to a residential telephone subscriber unless such person or entity has
5 instituted procedures for maintaining a list of persons who request not to receive telemarketing calls
6 made by or on behalf of that person or entity.”

7 67. Any “person who has received more than one telephone call within any 12-month
8 period by or on behalf of the same entity in violation of the regulations prescribed under this
9 subsection may” may bring a private action based on a violation of said regulations, which were
10 promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone
11 solicitations to which they object. 47 U.S.C. § 227(c).

12 68. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be initiated,
13 telephone solicitations to telephone subscribers such as Plaintiff and the Do Not Call Registry Class
14 members who registered their respective telephone numbers on the National Do Not Call Registry,
15 a listing of persons who do not wish to receive telephone solicitations that is maintained by the
16 federal government.

17 69. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not Call
18 Registry Class received more than one telephone call in a 12-month period made by or on behalf of
19 Defendant in violation of 47 C.F.R. § 64.1200, as described above. As a result of Defendant’s
20 conduct as alleged herein, Plaintiff and the Do Not Call Registry Class suffered actual damages and,
21 under section 47 U.S.C. § 227(c), are entitled, *inter alia*, to receive up to \$500 in damages for such
22 violations of 47 C.F.R. § 64.1200.
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¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

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Respectfully submitted,

AHDOOT & WOLFSON, PC

Dated: April 30, 2019

/s/ Robert Ahdoot

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Counsel for Plaintiff and the Class

CIVIL COVER SHEET

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
TAYLOR BASILE, individually and on behalf of all others similarly situated,
(b) County of Residence of First Listed Plaintiff Nassau (New York)
(c) Attorneys (Firm Name, Address, and Telephone Number)
Robert Ahdoot, AHDOOT & WOLFSON, PC
10728 Lindbrook Drive, Los Angeles, CA 90024
Tel: 310-474-9111; Fax: 310-474-8585

DEFENDANTS
JENNY CRAIG, INC., a California Corporation,
County of Residence of First Listed Defendant
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED
Attorneys (If Known)
'19CV0788 LAB BGS

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)
PTF DEF
Citizen of This State 1 1
Citizen of Another State 2 2
Citizen or Subject of a Foreign Country 3 3
Incorporated or Principal Place of Business In This State 4 4
Incorporated and Principal Place of Business In Another State 5 5
Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)
Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, FEDERAL TAX SUITS, OTHER STATUTES.

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):
28 U.S.C. § 1332(d)(2); violations of 47 U.S.C. § 227 et seq.
Brief description of cause:
Unauthorized text messaging in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

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 04/30/2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Robert Ahdoot

FOR OFFICE USE ONLY
RECEIPT # AMOUNT APPLYING IFP JUDGE MAG JUDGE

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: [Jenny Craig Hit with Class Action Over Automated Telemarketing Messages](#)
