

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

**1. BROOKE BOWES, individually and on
behalf of all others similarly situated,**

Plaintiff,

v.

**1. AMERICAN EAGLE OUTFITTERS, INC., a
Delaware corporation; and**

**2. AEO MANAGEMENT CO., a Delaware
corporation**

Defendants.

)
)
)
) **Case No.:** CIV-17-1166-R
)
) **CLASS ACTION COMPLAINT**
)
) **JURY TRIAL DEMANDED**
)
)
)
)
)
)

COMPLAINT

Plaintiff, BROOKE BOWES, by and through her attorneys, for herself and all others similarly situated (hereinafter Ms. Bowes and the putative Class members are collectively referred to as the “Class”), for this complaint against Defendants AMERICAN EAGLE OUTFITTERS, AEO MANAGEMENT CO., and their present, former, or future direct and indirect parent companies, subsidiaries, affiliates, agents, and/or related entities (collectively “AEO” or “Defendants”) alleges and states as follows:

I. PARTIES

1. Plaintiff Brooke Bowes is a citizen of Oklahoma, residing in Oklahoma County, Oklahoma.

2. Defendant American Eagle Outfitters, Inc. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. American Eagle Outfitters, Inc. is

doing business in Oklahoma, including in the Western District of Oklahoma, and throughout the United States.

3. Defendant AEO Management Co. is a Delaware corporation with its principal place of business in Pittsburgh, Pennsylvania. AEO Management Co. is a subsidiary of defendant American Eagle Outfitters, Inc. AEO Management is doing business in Oklahoma, including in the Western District of Oklahoma, and throughout the United States.

II. VENUE AND JURISDICTION

4. This Court has subject-matter jurisdiction over Telephone Communication Privacy Act (“TCPA”) claims under 28 U.S.C. § 1331 because TCPA claims arise under the laws of the United States, specifically 47 U.S.C. § 227, et seq. *See Mims v. Arrow Financial Services, LLC*, 132 S.Ct. 740, 744-53 (2012). This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 based on complete diversity of citizenship of the parties and amount in controversy in excess of \$5 million, exclusive of interest, and costs.

5. Defendants conduct substantial business within the State of Oklahoma such that Defendants have more than sufficient contacts within the State of Oklahoma to allow this Court to assert personal jurisdiction. Additionally, the wrongful acts alleged in this Complaint occurred in Oklahoma.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(1) as Defendants reside in the District. Venue is also appropriate in this District pursuant to 28 U.S.C. §

1391(b)(2) because Defendants (i) conduct a substantial business in this District and (ii) a substantial part of the events giving rise to Plaintiff's claims took place within this District.

III. NATURE OF THE ACTION

Background and Procedural History

7. Plaintiff, individually and as class representative for all others similarly situated brings this action against Defendants for violations of the Telephone Consumer Protection Act, 47 U.S.C. §227, et seq. ("TCPA").

8. This action asserts claims that were abandoned by the plaintiffs in a previously filed TCPA class action in the United States District Court for the Southern District of New York, captioned *Christina Melito, et al. v. American Eagle Outfitters, Inc., et al.*, No. 1:14-cv.02440-VEC ("*Melito*"), when the settlement class in that case was arbitrarily narrowed to a secret list of 618,301 persons filed under seal in *Melito*.

9. The complaints *Melito* defined the class therein in terms of whether they had received unconsented spam texts in violation of the TCPA. The Third Amended Complaint in *Melito*, for example, stated that Plaintiffs bring this case as a class action on behalf of National Classes as defined as follows:

AEO Spam Text Class: AEO Spam Text Class: All persons in the United States who: (a) received a text message sent by AEO and/or a third party acting on AEO's behalf; (b) promoting AEO's goods or services; (c) on their cellular telephone line; (d) that were sent using the telephony systems that caused the texts to be sent to Plaintiffs; (e) at any time in the period that begins four years before April 8, 2010 to trial.

AEO Revocation Class: All persons in the United States who: (a) received a text message sent by AEO and/or a third party acting on AEO's behalf; (b) after unsubscribing from receiving further text messages from AEO; (c) on their cellular

telephone line; (d) that were sent using the telephony systems that caused the texts to be sent to Plaintiffs; (e) at any time in the period that begins April 8, 2010 to trial.

Melito, DE119:¶85.

10. Plaintiff Brooke Bowes was a class member within the scope of the Third Amended Complaint, as she received unconsented spam text messages as described in the pleading, despite the fact that she had expressly declined to receive AEO mobile alerts, as detailed below.

11. When the parties settled the *Melito* action, however, the parties redefined the class, arbitrarily limiting membership to a list provided by the Defendants. The *Melito* Claims Administrator explained: “On January 27, 2017, KCC received from Defendant a list of 633,078 records. The records included data points such as: names, addresses, e-mail addresses, and phone numbers. KCC consolidated duplicate phone numbers that had multiple mailing or e-mail addresses and determined that there were 618,301 unique phone numbers (hereafter, the ‘Class List’).” *Melito*, DE287:2¶5.

12. As a result, individuals such as Brooke Bowes, who had received unconsented spam texts in violation of the TCPA, and thus were included in the plaintiff classes defined in the Third Amended Complaint, but who were not included on the Defendants “Class List,” were thereby arbitrarily excluded from the *Melito* Settlement Class.

13. On information and belief, both Brooke Bowes and thousands of persons similarly situated, with valid TCPA claims against AEO, were arbitrarily excluded from the *Melito* Settlement Class.

14. In fact, the *Melito* district court recited that although “over one hundred thousand claim forms were submitted,” the Settlement Administrator identified only “38,141 claim forms as valid claims by class members with phone numbers on the Class List.” *Melito*, Opinion & Order, DE318:3; *see Melito*, DE287:6¶¶23-24 (Declaration of the *Melito* Claims Administrator: “As of the date of this declaration, 112,699 Claim Forms were submitted. Of these, 38,141 have been identified as claims submitted by valid class members with phone numbers contained in the Class List, 11,833 were identified as duplicate claims, and 62,665 were determined to be invalid because the claimant or his/her phone number was not included on the Class List.”).

15. According to the *Melito* district court individuals such as Brooke Bowes, who received unconsented spam texts in violation of the TCPA yet were excluded from the Defendants’ “Class List,” are entitled to seek relief by filing an action such as this. In the words of the *Melito* district court: “The protection for anyone who should have been in the Class but was not included on the Class List is iron-clad: they are not in the Class and therefore any claims they have against AEO are not being released. They are free to bring their own lawsuit.” *Melito*, DE318:26n.19.

16. The *Melito* court in granting final approval to a class-wide settlement further found:

“Because they are not members of the Settlement Class, Ms. Brooke Bowes and Mr. Mierzwicki are not bound by this Final Approval Order And Judgment or by the Settlement Agreement. Thus, to the extent that they believe they have claims against AEO, they are free to assert such claims against AEO. Nothing in this Order is intended to address or evaluate the merits of claims of Ms. Brooke Bowes or Mr. Mierzwicki or AEO’s defenses thereto, which also are not waived or released by this Final Approval Order And Judgment or by the Settlement Agreement.”

Order Granting Final Approval of Class Action Settlement Dismissing Class Plaintiffs' Claims and Entering Final Judgment, U.S.D.C. S.D.N.Y. No. 1:14-cv-02440-VEC, DE319.

17. In light of the *Melito* plaintiffs' failure to pursue the claims of Ms. Bowes and others similarly situated (such as Mr. Mierzwicki), Ms. Bowes now seeks redress in this Court for claims beyond the scope of the *Melito* settlement.

The Telephone Consumer Protection Act of 1991, 47 U.S.C. § 227

18. Enacted in 1991, the TCPA makes it unlawful “to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice ... to any telephone number assigned to a ... cellular telephone service.” 47 U.S.C. §227(b)(1)(A)(iii). The TCPA, in 47 U.S.C. § 227(b)(3), provides a private cause of action to persons who receive calls in violation of 47 U.S.C. §227(b)(1)(A).

19. Text messages are deemed to be telephone calls within the meaning of the TCPA. *See* FCC 15-72, *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, WC Docket No. 07-135, at ¶¶107-122 (Federal Communications Commission, rel. July 10, 2015); *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014, 14115, ¶165 (2003).

20. Federal Communication Commission (“FCC”) regulations “generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any

violations.” *See* Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Memorandum and Order, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995). The FCC confirmed this principle in 2013, when it explained that “a seller may be held vicariously liable under federal common law principles of agency for violations of either section 227(b) or section 227(c) that are committed by third-party telemarketers.” *See In the Matter of the Joint Petition Filed by Dish Network, LLC*, 28 F.C.C. Rcd. 6574, 6574 (2013).

IV. FACTUAL ALLEGATIONS

Defendants

21. Defendant American Eagle Outfitters, Inc. is a publicly traded company and is a leading global specialty retailer offering high-quality clothing, accessories, and personal care products at affordable prices under its American Eagle Outfitters and Aerie brands. According to its most recent filing with the Securities and Exchange Commission on Form 10-K, American Eagle operates eleven stores in the State of Oklahoma.

22. Defendant AEO Management Co. is a subsidiary of Defendant American Eagle Outfitters, Inc. and operates Defendant American Eagle Outfitters, Inc.’s website and promotions.

23. AEO utilizes bulk marketing by advertising through Short Message Services. The term “Short Message Service” or “SMS” is a messaging system that allows cellular telephone subscribers to use their cellular telephones to send and receive short text messages, usually limited to 160 characters.

24. AEO makes SMS calls using ATDS equipment and software that has the capacity to dial numbers randomly or sequentially as well as dial numbers from lists to cellular telephones whose owners have not provided prior express consent to receive such calls (“Spam Texts”), including Plaintiff.

Plaintiff Brooke Bowes

25. Beginning in or around December 2015, Ms. Bowes received numerous Spam Texts from, or on behalf of, AEO on her cellular telephone.

26. The Spam Texts were from short code 324-53 and advertised promotions offered by AEO. Such advertised promotions included, but were not limited to: “Take up to 25% off our hottest spring styles thru Monday!;” “Cause we GIVE A SHIRT. AEO tops: buy 2, get 1 free!;” “Correction! Button downs for \$29.99 starts TOMOTTOW (thru Sunday)! Our bad. See, “shirt” really DOES happen...;” and “Earn bonus points when you get the latest version of the app & check your Rewards status.”

27. The Spam Texts direct the recipient to go to several websites including, but not limited to: <http://dqs.co/7go3ms>, : <http://dqs.co/6gyyer>, <http://dqs.co/00d225>, <http://dqs.co/261w9p>, <http://dqs.co/eklmj3>, <http://dqs.co/4g6ep>, <http://dqs.co/ylxuzi>, <http://dqs.co/eg9jgr>, <http://dqs.co/6w1bvc>, <http://dqs.co/5s4he3k>, and <http://dqs.co/bchdscy>.

28. Each of the websites is owned, maintained, and/or operated by Defendant AEO.

29. Ms. Bowes did not provide prior express consent, either written or oral, to receive Spam Texts on her Cellular telephone from, or on behalf of, AEO. In fact, Ms. Bowes specifically requested that she NOT receive “Mobile Alerts.”

30. On information and belief, AEO is responsible for sending the above-described Spam Texts.

31. AEO has sent a large number of Spam Texts to persons in Oklahoma, and throughout the United States.

32. On information and belief, AEO intends to continue to send similar Spam Texts to persons in Oklahoma and throughout the United States.

V. CLASS ACTION ALLEGATIONS

33. Plaintiff brings this lawsuit under Rule 23(a) and Rule(b)(3) of the Federal Rules of Civil Procedure, on behalf of herself and a class of persons who without their consent received AEO spam texts during the Class Period from January 25, 2017, through April 4, 2017.

34. Excluded from the Class are: (a) federal, state and/or local governments, including, but not limited to, their departments, agencies, divisions, bureaus, boards, sections, groups, counsels, and/or subdivisions; (b) any entity in which Defendants have a controlling interest, to include, but not limited to, their legal representatives, heirs, and successors; (c) all persons who are presently in bankruptcy proceedings or who obtained a bankruptcy discharge in the last three years; (d) any judicial officer in this lawsuit and/or persons within

the third degree of consanguinity to such officer; and (e) the 618,301 persons included on a secret list filed under in *Melito* who are bound by the class-action judgment in *Melito*.

35. Upon information and belief, the Class consists of thousands of recipients of Spam Texts who were not included in the judgment in *Melito*. Accordingly, it would be impracticable to join all Class Members before the Court

36. There are numerous and substantial questions of law or fact common to all of the members of the Class and which predominate over any individual issues. Included within the common questions of law or fact are:

- a. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf violated 47 U.S.C. § 227(b)(1)(A)(iii) by sending unsolicited commercial Spam Texts to the cellular telephone numbers of Plaintiff and members of the Class;
- b. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf knowingly and/or willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by sending unsolicited commercial Spam Texts to the cellular telephone numbers of Plaintiff and members of the Class, thus entitling Plaintiff and members of the Class to treble damages;
- c. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf violated 47 U.S.C. § 227(b)(1)(A)(iii) by sending unsolicited commercial Spam Texts to the cellular telephone numbers of

Plaintiff and members of the Class after unsubscribing from receiving such Spam Texts;

- d. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf knowingly and/or willfully violated 47 U.S.C. § 227(b)(1)(A)(iii) by sending unsolicited commercial Spam Texts to the cellular telephone numbers of Plaintiff and members of the Class after unsubscribing from receiving such Spam Texts, thus entitling Plaintiff and members of the Class to treble damages;
- e. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf violated 47 C.F.R. § 64.1200(d) by initiating any text call for telemarketing purposes to the cellular telephone numbers of Plaintiff and members of the Class without following procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts;
- f. whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf knowingly and/or willfully violated 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts in the future, pursuant to 47 U.S.C. § 227(c)(5)(A), thus entitling Plaintiff and members of the Class to treble damages;

- g. Whether AEO is liable for Spam Texts promoting AEO's products and/or services sent by AEO's affiliates, agents, and/or other persons or entities acting on AEO's behalf;
- h. Whether AEO is liable for Spam Texts promoting AEO's products and/or services sent to persons after those persons unsubscribed from receiving such Spam Texts, whether sent by AEO, AEO's affiliates or agents, and/or other persons or entities acting on AEO's behalf;
- i. Whether AEO is liable for Spam Texts to persons on AEO's internal do-not-call list sent by AEO's affiliates, agents, and/or other persons and entities acting on AEO's behalf; and
- j. Whether AEO and/or their affiliates, agents, and/or other persons or entities acting on AEO's behalf should be enjoined from violating the TCPA in the future.

37. The claims of the Plaintiff are typical of the claims of Class Members, in that she shares the above-referenced facts and legal claims or questions with Class Members; there is a sufficient relationship between the damage to Plaintiff and Defendants' conduct affecting Class Members, and Plaintiff has no interests adverse to the interests of other Class Members.

38. Plaintiff will fairly and adequately protect the interests of Class Members and have retained counsel experienced and competent in the prosecution of complex class actions including complex questions that arise in consumer protection litigation.

39. A class action is superior to other methods for the fair and efficient adjudication of this controversy, since individual joinder of all Class Members is impracticable and no other group method of adjudication of all claims asserted herein is more efficient and manageable for at least the following reasons:

- a. the claims presented in this case predominate over any questions of law or fact, if any exists at all, affecting any individual member of the Class;
- b. absent a Class, the Class Member will continue to suffer damage and Defendants' unlawful conduct will continue without remedy while Defendants profit from and enjoy their ill-gotten gains;
- c. given the size of individual Class Members' claims, few, if any, Class Members could afford to or would seek legal redress individually for the wrongs that Defendants have committed against them, and absent Class Members have no substantial interest in individually controlling the prosecution of individual actions;
- d. when the liability of Defendants has been adjudicated, claims of all Class Members can be administered efficiently and/or determined uniformly by the Court; and
- e. this action presents no difficulty that would impede its management by the court as a class action, which is the best available means by which Plaintiff and members of the Class can seek redress for the harm caused to them by Defendants.

40. Because Plaintiff seeks relief for the entire Class, the prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for Defendants.

41. Further, bringing individual claims would overburden the Courts and be an inefficient method of resolving the dispute, which is the center of this litigation. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interest of other members of the Class who are not parties to the adjudication and may impair or impede their ability to protect their interests. As a consequence, class treatment is a superior method for adjudication of the issues in this case.

42. Defendants have acted on grounds generally applicable to the Classes, thereby sending final injunctive relief and corresponding declaratory relief with respect to the Classes appropriate on a class-wide basis. Moreover, on information and belief, Plaintiffs allege that the Spam Texts sent by Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf that are complained of herein are substantially likely to continue in the future if an injunction is not entered.

VI. FIRST CAUSE OF ACTION

Violation of the Telephone Consumer Protection Act, 47 U.S.C. §227(b)(1)(A)

43. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

44. Plaintiff brings this claim against Defendants for sending Spam Texts without consent.

45. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by sending unsolicited commercial Spam Texts to the cellular telephone numbers of Plaintiffs and members of the Class.

46. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiffs and members of the Spam Text Classes presumptively are entitled to an award of \$500 in damages for each and every Spam Text in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

47. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A), by sending unsolicited commercial Spam Texts to cellular telephone numbers, in the future.

VII. SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act,
47 U.S.C. §227(b)(1)(A)

48. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

49. Plaintiff brings this claim against Defendants for sending Spam Texts without consent.

50. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by sending unsolicited commercial Spam Texts to the cellular telephone numbers of Plaintiffs and members of the Class.

51. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf knowing and/or willful violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), Plaintiff and members of the Class are entitled to treble damages of up to \$1,500 for each and every Spam Text in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3).

52. Plaintiff and members of the Spam Text Classes are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii), by sending unsolicited commercial Spam Texts to cellular telephone numbers, in the future.

VIII. THIRD CAUSE OF ACTION

Violation of 47 C.F.R. § 64.1200(d) & 47 U.S.C. § 227(c)(5)

53. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

54. Plaintiff brings this claim against Defendants for sending Spam Texts without consent.

55. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of 47 C.F.R. § 64.1200(d), by initiating any Spam Text for telemarketing purposes to Plaintiff and members of the Class, without following procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts ("internal do-not-call list"). This includes Defendant's failure to properly record do-not-call requests, failure to maintain a record of do-not-call requests, and failure to honor do-not-call requests.

56. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's violations of 47 C.F.R. § 64.1200(d), Plaintiff and members of the Class are entitled to an award of \$500 in statutory damages for each and every Spam Text in violation of the internal do-not-call list regulation, pursuant to 47 U.S.C. § 227(c)(5)(B).

57. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf from violating 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts in the future, pursuant to 47 U.S.C. § 227(c)(5)(A).

IX. FOURTH CAUSE OF ACTION

**Knowing and/or Willful Violation of 47 C.F.R. § 64.1200(d) &
47 U.S.C. § 227(c)(5)**

58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

59. Plaintiff brings this claim against Defendants for sending Spam Texts without consent.

60. The foregoing acts and omissions of Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of 47 C.F.R. § 64.1200(d), by initiating any Spam Text for telemarketing purposes to Plaintiff and members of the Class, without following procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts (“internal do-not-call list”). This includes Defendant's failure to properly record do-not-call requests, failure to maintain a record of do-not-call requests, and failure to honor do-not-call requests.

61. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's knowing and/or willful violations of 47 C.F.R. § 64.1200(d), Plaintiff and members of the Class are entitled to an award of treble damages of up to \$1500 for each and every Spam Text in violation of the internal do-not-call list regulation, pursuant to 47 U.S.C. § 227(c)(5)(B).

62. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other persons or entities

acting on Defendants' behalf from violating 47 C.F.R. § 64.1200(d) by failing to follow procedures for maintaining a list of persons who request not to receive telemarketing Spam Texts in the future, pursuant to 47 U.S.C. § 227(c)(5)(A).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the class she seeks to represent, prays for a judgment as follows:

- A. Declaring this action to be a class action property maintained under Federal Rules of Civil Procedure 23(a) and 23(b)(3);
- B. Appointing Plaintiff Brooke Bowes as representative of the Class;
- C. Declaring Defendants and/or their affiliates, agents, and/or related entities' actions complained of herein violated the TCPA;
- D. Awarding to Plaintiff and the Class statutory damages against all defendants, jointly and severally;
- E. Enjoining Defendants and/or their affiliates, agents, and/or other related entities, as provided by law, from engaging in the unlawful conduct set forth herein;
- F. Awarding to Plaintiff and the Class attorneys' fees and costs, as allowed by law and/or equity;
- G. Leave to amend this Complaint to conform to the evidence presented at trial;
and
- H. Ordering such other and further relief as the Court deems necessary just, and proper.

DEMAND FOR JURY

Plaintiff demands a trial by jury for all issues so triable.

DATED: October 30, 2017

Respectfully submitted,

/s/ Daniel V. Carsey

Daniel V. Carsey, OBA No. 21490

Of the firm:

RISCHARD & CARSEY, PLLC
100 Park Avenue, Suite 700
Oklahoma City, OK 73102
(405) 235-2393
(405) 231-2830 - Facsimile
dcarsey@rischardlaw.com

**ATTORNEY FOR PLAINTIFF,
BROOKE BOWES**

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

1. BROOKE BOWES, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Daniel V. Carsey, Esq. of Rischard & Carsey, PLLC, 100 Park Avenue, Suite 700, Oklahoma City, OK 73102.

DEFENDANTS

1. AMERICAN EAGLE OUTFITTERS, INC.
2. AEO MANAGEMENT CO.

County of Residence of First Listed Defendant Allegheny County
(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
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 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		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input checked="" type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutional of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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. Section 227

Brief description of cause:

Violations of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 5,000,001.00

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

10/30/2017

/s/ Daniel V. Carsey, Attorney for Plaintiff

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Print

Save As...

Reset

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: [Spam Text Suit Against American Eagle Outfitters Says Previous Settlement Left Many Out](#)
