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12 **UNITED STATES DISTRICT COURT**
13 **CENTRAL DISTRICT OF CALIFORNIA**

14 ANDREW DRESSLER, Individually)
15 and on Behalf of All Others Similarly)
16 Situated,) Case No. 2:21-cv-06303
17)
18 Plaintiff,)
19) CLASS ACTION COMPLAINT
20 v.)
21)
22 NEWEGG, INC.,)
23)
24 Defendant.)

25 1. Plaintiff Andrew Dressler brings this action against Newegg, Inc.
26 (“Newegg” or “Defendant”), to secure redress for its sending numerous nonconsensual,
27 automated text message calls to the cellular telephone numbers of Plaintiff and others,
28 in violation of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

29 2. Newegg continued to send Plaintiff automated marketing texts even though
30 it had received and processed multiple demands from Plaintiff to stop the texts.

31 **INTRODUCTION**

32 3. Advancements in telephone dialing technology by the 1980s and 90s made
33 reaching a large number of consumers by telephone easier and more cost-effective.

1 However, this technology also brought with it an onslaught of unsolicited robocalls,
2 spam text messages, and junk faxes that intrude on individual privacy and waste
3 consumer time and money. As a result, the federal government and numerous states
4 have enacted legislation to combat these widespread abuses. See *Mims v. Arrow Fin.*
5 *Servs., LLC*, 565 U.S. 368, 371 (2012) (noting that federal legislation – the TCPA –
6 was enacted after Congress found that callers, “by operating interstate, were escaping
7 state-law prohibitions on intrusive nuisance calls”).

8 4. As Congress recognized:

9 Many customers are outraged over the proliferation of intrusive, nuisance
10 calls to their homes.... Banning such automated or prerecorded telephone
11 calls to the home, except when the receiving party consents to receiving
12 the call or when such calls are necessary in an emergency situation
13 affecting the health and safety of the consumer, is the only effective means
of protecting telephone consumers from this nuisance and privacy
invasion.

14 Pub. L. No. 102-243, 105 Stat. 2394 § 2(6, 12) (1991).

15 5. As is relevant here, the TCPA provides that “[n]o person or entity shall
16 initiate any telephone solicitation to ... [a] residential telephone subscriber who has
17 registered his or her telephone number on the national do-not-call registry of persons
18 who do not wish to receive telephone solicitations that is maintained by the Federal
19 Government.” 47 C.F.R. § 64.1200(c)(2).

20 6. The TCPA further prohibits “initiat[ing] any call for telemarketing
21 purposes to a residential telephone subscriber unless such person or entity has instituted
22 procedures for maintaining a list of persons who request not to receive telemarketing
23 calls made by or on behalf of that person or entity[.]” 47 C.F.R. § 64.1200(d).

24 7. The TCPA also prohibits “mak[ing] any call (other than a call made for
25 emergency purposes or made with the prior express consent of the called party) using
26 any automatic telephone dialing system . . . to any telephone number assigned to a . . .
27 cellular telephone service[.]” 47 U.S.C. § 227(b)(1)(A)(iii).

1 **PARTIES**

2 14. Plaintiff is a natural person and a citizen of the State of California, who
3 resides in Folsom, California. At all relevant times, Plaintiff was the subscriber for the
4 cellular telephone at issue. Plaintiff’s cellular telephone number has been on the
5 National Do Not Call Registry since approximately 2006.

6 15. Newegg, founded in 2001, began by selling PC components and helped
7 popularize the PC-building movement. Newegg has diversified since and now is the
8 leading tech-focused e-retailer in North America. Newegg also has a global reach in
9 Europe, South America, Asia Pacific and the Middle East. According to its website,
10 “millions of customers turn to Newegg to shop for the latest PC components, consumer
11 electronics, smart home and gaming products. Newegg is consistently ranked as one of
12 the best online shopping destinations, and the company regularly earns industry-leading
13 customer service ratings.”¹ Newegg is headquartered in City of Industry, California.

14 **FACTS**

15 16. Because Plaintiff was interested in purchasing certain high-demand
16 technology items from Newegg, he registered for Newegg’s Newegg Shuffle marketing
17 program in April 2021. Newegg.com describes its Newegg Shuffle program as “[o]ur
18 drawing system to purchase in-demand products on Newegg.com that are currently
19 limited in supply. Our Newegg Shuffle can be found at www.newegg.com/shuffle.”²

20 17. Soon thereafter, Plaintiff received multiple text messages alerting him to
21 the start times for certain Newegg Shuffle marketing events.

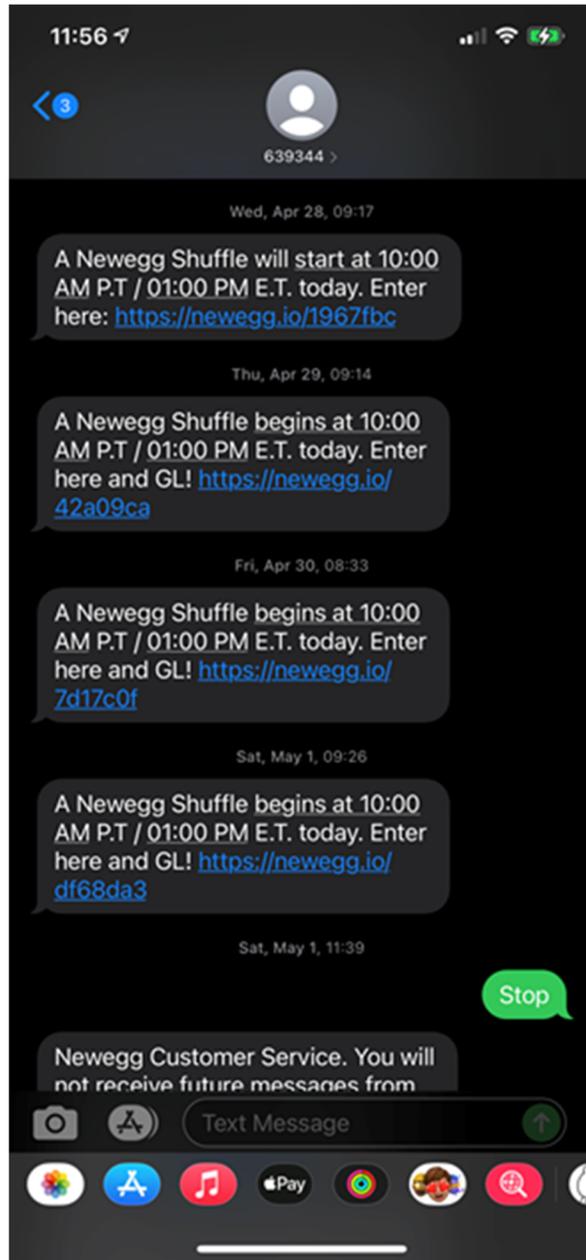
22 18. Plaintiff participated in several Newegg Shuffle events; however, each
23 time he participated in the drawing system, he was unsuccessful.

24 19. Following these unsuccessful attempts and after receiving texts from
25 Newegg for five consecutive days, Plaintiff texted Newegg to “STOP” sending texts to
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27 ¹ <https://www.newegg.com/corporate/about> (last accessed on July 30, 2021).

28 ² <https://kb.newegg.com/knowledge-base/newegg-shuffle-faq/> (last accessed on July 30, 2021).

1 his cell phone. Below is the screen shot from Plaintiff’s cell phone documenting his
2 “STOP” command.
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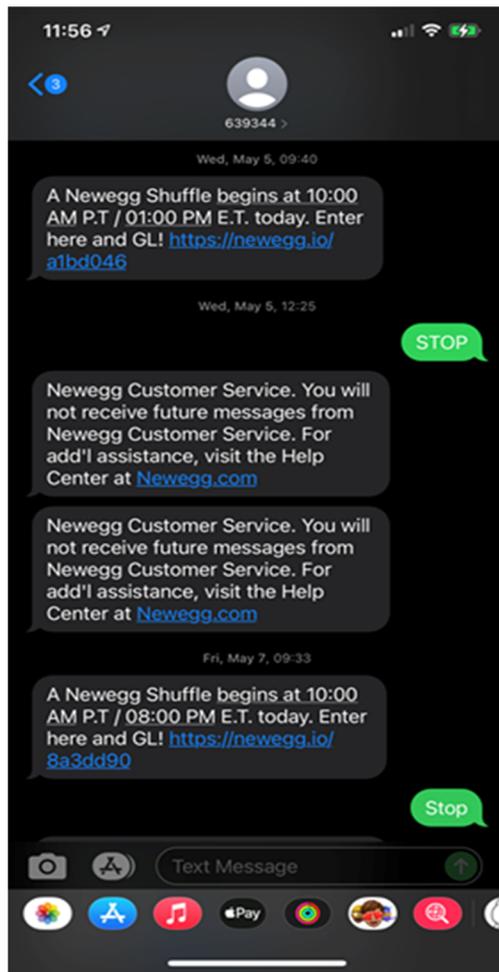


24 20. Newegg received, understood and processed Plaintiff’s requests to stop.
25 Soon after texting his “STOP” command, Newegg responded with two repetitive and
26 identical texts indicating that it would stop sending texts to Plaintiff. Below is the
27 screen shot from Plaintiff’s cell phone documenting Newegg’s response:
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1 21. Unfortunately, as evidenced by the above screen shot, Newegg did not
2 actually stop sending texts to Plaintiff following Plaintiff’s initial “STOP” command.

3 22. Instead, Newegg kept texting marketing messages. Plaintiff received three
4 more such texts between May 3, 2021 and May 5, 2021.

5 23. So, on May 5, 2021, Plaintiff again texted Newegg to “STOP” sending
6 texts to his cell phone. This is evidenced by the below screen shot from Plaintiff’s cell
7 phone.

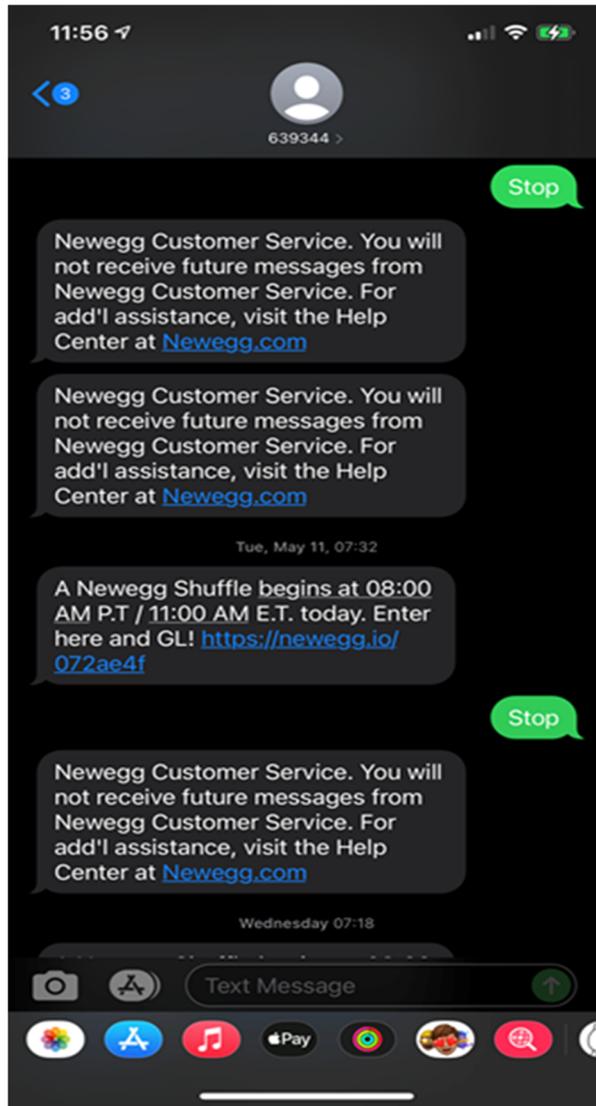


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24 24. As demonstrated by the above screen shot, Newegg again responded to
25 Plaintiff’s “STOP” command with two identical and repetitive texts stating Newegg
26 would stop sending texts to Plaintiff’s cell phone.

27 25. But, Newegg did not stop sending texts to Plaintiff’s cell phone. Newegg
28 sent another marketing text on May 7, 2021 (see above screen shot).

1 26. In response to this unwanted text, Plaintiff texted Newegg to “STOP”
2 sending texts to his cell phone for a third time in five days (see above screen shot, bottom
3 right corner).

4 27. Newegg responded with the same two repetitive and identical texts
5 declaring that Newegg will stop texting Plaintiff.

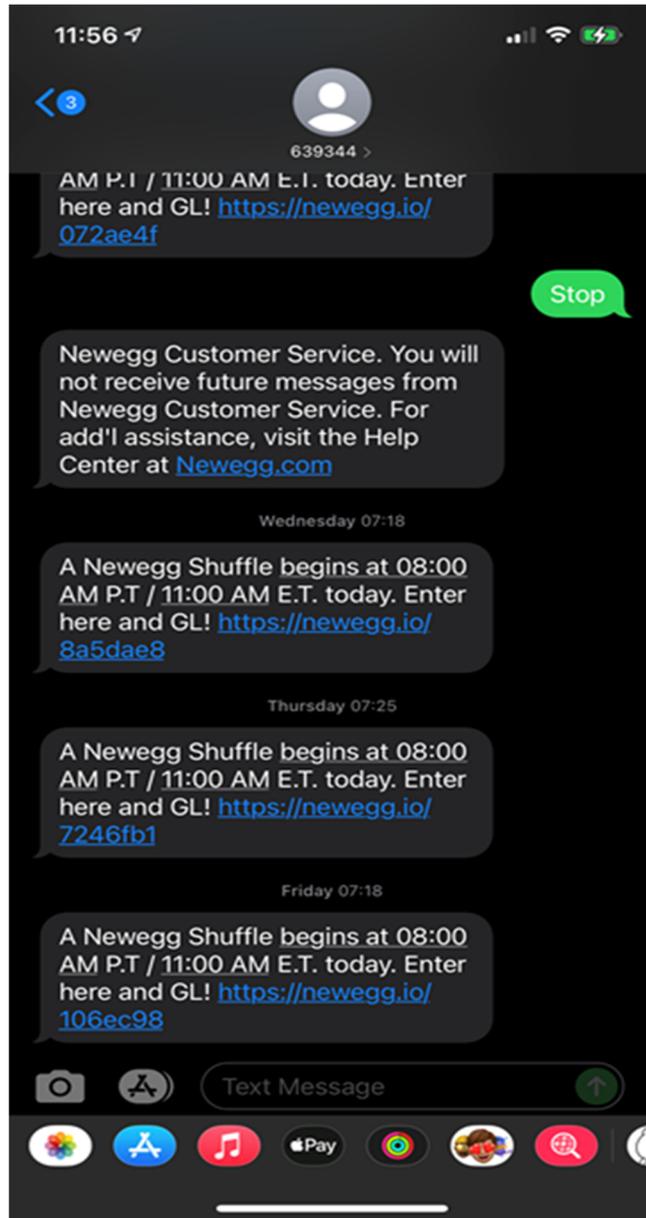


24 28. However, as the above screen shot of Plaintiff’s cell phone demonstrates,
25 Newegg sent another unwanted marketing text on May 11, 2021.

26 29. For the fourth time, Plaintiff texted Newegg to “STOP” sending texts to
27 his cell phone.

28 30. And, Newegg responded that it would stop sending texts to Plaintiff.

1 31. But, Newegg did not stop texting Plaintiff, as Newegg has sent several
2 additional texts to Plaintiff’s cell phone, three of which are demonstrated by the below
3 screen shot.



24 32. Newegg did not have Plaintiff’s consent to send at least nine of the texts
25 documented above.

26 33. Newegg sent additional unauthorized marketing texts to Plaintiff’s cell
27 phone, including as recently as June 3, 2021.
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1 34. Newegg knew it did not have consent, and knows it currently does not have
2 consent, to send these messages because Newegg previously received Plaintiff’s
3 repeated “STOP” commands and acknowledged such receipt by sending additional texts
4 to Plaintiff responding that it would not send additional texts to him.

5 35. Within the four years prior to the filing of this action, Newegg caused
6 autodialed text message calls to be made repeatedly to the cell phones of Plaintiff and
7 other consumers nationwide, without the prior express consent of the called party or
8 after the called party expressly requested that Newegg “STOP” sending texts.

9 36. In fact, the texts Newegg sent Plaintiff was a form of communication that
10 it also sent to thousands of consumers with identical or substantially identical verbiage
11 at the same time.

12 37. Newegg caused the text message calls at issue to be made using an
13 automatic telephone dialing system, as that term is used in the TCPA

14 38. Newegg’s use of a short message service (SMS) short codes — e.g.,
15 639344 located at the top of each screen shot above — demonstrates that these text
16 messages were sent using an automatic telephone dialing system, as opposed to being a
17 traditional, manually-dialed text message call from a “regular” telephone.

18 39. Many of Newegg’s text messages – including those that Plaintiff received
19 – are identical across all call recipients. However, even where there are minute
20 differences between messages, this is a result of the sophisticated, automated nature of
21 Newegg’s autodialer systems, and does not reflect that these calls were “manually”
22 dialed. Specifically, in those instances, Newegg’s dialing system automatically
23 populates a generic message template with information its system attributes to the
24 particular phone number it intendeds to contact. The system then populates specific data
25 into the template – similar to a mail merge – then automatically sends these text
26 messages out en masse.

27 40. The equipment used to call Plaintiff and others not only had the capacity
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1 to store or produce telephone numbers to be called using a random or sequential number
2 generator (and to dial such numbers), but was programmed to sequentially or randomly
3 access stored telephone numbers to automatically call such numbers when it made the
4 calls to plaintiff and the class. These calls were made with equipment capable of dialing
5 numerous phone numbers in a short period of time without human intervention, as part
6 of an automated process.

7 41. The equipment Newegg used had the capacity to store or produce telephone
8 numbers to be called using a random or sequential number generator, and to dial such
9 numbers. In other words, no human being physically dialed each digit of Plaintiff's and
10 the other class members' telephone numbers to call their phones—the calls were made
11 automatically pursuant to a computer program that was programmed to automatically
12 decide what phone numbers to call when, and what content to send.

13 42. The autodialer accessed a dataset – a preproduced list - of Defendant,
14 sorted through that dataset to determine which data to use to generate a list of numbers
15 to call, used a random or sequential number generator to create a brand-new sequence
16 for calling those numbers based upon complex algorithms, stored those numbers and
17 then called the numbers. The autodialer sequentially generated phone numbers for
18 calling from that dataset, stored those numbers, and then automatically called those
19 numbers.

20 43. These violations were negligent. Alternatively, Newegg made these calls
21 to Plaintiff and the other members of the class defined below intentionally. Defendant
22 was well aware of the TCPA's prohibitions against use of autodialers in calls to
23 consumers, but made the business decision to send these text messages, anyway.

24 44. Upon information and belief, Newegg or its vendors keep records and data
25 from which it can determine which autodialed text message calls were made without
26 consent.

1 a. Whether Defendant had proper permission to make the text message
2 calls to Plaintiff and the class; and

3 b. Damages, including whether any violations were performed
4 willfully or knowingly such that Plaintiff and the other members of the class are entitled
5 to treble damages under 47 U.S.C. §§ 227(c)(5) and/or 47 U.S.C. § 227(b)(3).

6 51. Plaintiff's claims are typical of the claims of the other members of the
7 class. The factual and legal bases of Defendant's liability to Plaintiff and the other
8 members of the class are the same: Defendant violated the TCPA by causing autodialed
9 text message calls to be made to the cellular telephone number of each member of the
10 class, without permission.

11 52. Plaintiff will fairly and adequately protect the interests of the class.
12 Plaintiff has no interests that might conflict with the interests of the class. Plaintiff is
13 interested in pursuing his claims vigorously, and he has retained counsel competent and
14 experienced in class and complex litigation, including with regards to the claims alleged
15 herein.

16 53. Class action treatment is superior to the alternatives for the fair and
17 efficient adjudication of the controversy alleged herein. Such treatment will permit a
18 large number of similarly situated persons to prosecute their common claims in a single
19 forum simultaneously, efficiently, and without the duplication of effort and expense that
20 numerous individual actions would entail. There are, on information and belief, tens of
21 thousands of class members, such that joinder of all members is impracticable.

22 54. No difficulties are likely to be encountered in the management of this
23 action that would preclude its maintenance as a class action, and no superior alternative
24 exists for the fair and efficient adjudication of this controversy.

25 55. Defendant has acted and failed to act on grounds generally applicable to
26 Plaintiff and the other members of the class, thereby making relief appropriate with
27 respect to the class as a whole. Prosecution of separate actions by individual members
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1 of the class, should they even realize that their rights have been violated, would likely
2 create the risk of inconsistent or varying adjudications with respect to individual
3 members of the class that would establish incompatible standards of conduct.

4 56. The identity of the class is, on information and belief, readily identifiable
5 from Defendant's records.

6 **COUNT I**
7 **Violations of the TCPA, 47 U.S.C. § 227(c)**
8 **(Internal Do Not Call)**

9 57. Plaintiff re-alleges and incorporates all foregoing allegations.

10 58. Persons who engage in telemarketing – or who have others telemarket on
11 their behalf – are required to have policies, processes and procedures in place that ensure
12 that requests not to receive additional marketing calls or texts are honored. 47 C.F.R.
13 §64.1200(d).

14 59. Defendant did not have a proper policy, process or procedure in place with
15 regard to honoring requests that calls stop, such that Plaintiff and the class received texts
16 after demands that they stop. Alternative, Defendant did not follow whatever policy,
17 process or procedure it had in place, such that Plaintiff and the class received texts after
18 demands that they stop.

19 60. Companies that do telemarketing are required to honor requests to stop
20 calling as soon as practicable, and in no event later than 30 days after a request to stop.
21 Newegg's do not call process was fully-automated and capable of ceasing texts
22 immediately, but was improperly programmed not to do so.

23 61. These rules apply to both traditional phone calls, and text messages. 47
24 C.F.R. §64.1200(e); In Re TCPA, 18 F.C.C.R. 14014, 14115 (Jul. 3, 2003).

25 62. A cause of action accrues where there have been two or more calls or texts
26 within a twelve-month period.

27 63. Defendant violated the TCPA when it made the calls alleged herein.
28

1 64. As a result of Defendant’s conduct, and pursuant to Section 227(c)(5) of
2 the TCPA, Plaintiff and the other members of the class were harmed and are each
3 entitled to up to \$500 in damages for each violation.

4 65. Moreover, given the facts and circumstances here, including that
5 Defendant responded to Plaintiff’s multiple “STOP” commands indicating that it would
6 no longer text Plaintiff, it is apparent that injunctive relief is necessary to wrench
7 compliance. Plaintiff and the class therefore request an injunction against future
8 automated calls such as those at issue here, pursuant to 47 U.S.C. § 227(c)(5).

9 66. Because Defendant knew or should have known that neither Plaintiff nor
10 the class consented to receive these text messages to their cell phones—and/or willfully
11 caused such text message calls to be made to the cell phones of Plaintiff and the other
12 members of the class without their express consent—the Court should treble the amount
13 of statutory damages available to Plaintiff and the other members of the class, pursuant
14 to § 227(c)(5) of the TCPA. *Krakauer v. Dish Network LLC*, 925 F.3d 643, 661-62 (4th
15 Cir. 2019) (affirming treble TCPA damages after \$21M jury verdict in favor of class).

16 67. Plaintiff, individually and on behalf of the class, respectfully requests that
17 the Court enter judgment against Defendant for:

- 18 A. Certification of the class as alleged herein;
- 19 B. A declaration that Defendant violated the TCPA as to Plaintiff and
20 the class;
- 21 C. Injunctive relief aimed at preventing these future automated calls to
22 plaintiff’s and the class’ cell phones, after a request to stop;
- 23 D. Damages pursuant to 47 U.S.C. § 227(b)(3);
- 24 E. Costs, expenses, and attorneys’ fees, to the extent permitted by law;
25 and
- 26 F. Such other or further relief as the Court deems just and proper.

COUNT II
Violations of the TCPA, 47 U.S.C. § 227(c)
(Do Not Call Registry)

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4 68. Plaintiff re-alleges and incorporates all foregoing allegations.

5 69. Persons who engage in telemarketing to phone numbers that are on the
6 National Do Not Call Registry are required to honor requests to stop calling
7 immediately, regardless of whether the parties continue their relationship with one
8 another.

9 70. A cause of action accrues where there have been two or more such calls or
10 texts within a twelve-month period.

11 71. Defendant violated the TCPA when it made the calls alleged herein, after
12 Plaintiff and the class members requested that they stop.

13 72. As a result of Defendant's conduct, and pursuant to Section 227(c)(5) of
14 the TCPA, Plaintiff and the other members of the class were harmed and are each
15 entitled to up to \$500 in damages for each violation.

16 73. These calls were made to persons who did not consent to receive those texts
17 from Defendant.

18 74. Defendant violated the TCPA when it made the calls alleged herein.

19 75. Because Defendant knew or should have known that neither Plaintiff nor
20 the class consented to receive these text messages to their cell phones—and/or willfully
21 caused such text message calls to be made to the cell phones of Plaintiff and the other
22 members of the class without their express consent—the Court should treble the amount
23 of statutory damages available to Plaintiff and the other members of the class, pursuant
24 to Section 227(b)(3) of the TCPA. *Krakauer v. Dish Network LLC*, 925 F.3d 643, 661-
25 62 (4th Cir. 2019) (affirming treble TCPA damages after \$21M jury verdict in favor of
26 class).

27 76. Plaintiff, individually and on behalf of the class, respectfully requests that
28 the Court enter judgment against Defendant for:

- 1 A. Certification of the class as alleged herein;
- 2 B. A declaration that Defendant violated the TCPA as to Plaintiff and
- 3 the class;
- 4 C. Injunctive relief aimed at preventing these future automated calls to
- 5 plaintiff's and the class' cell phones;
- 6 D. Damages pursuant to 47 U.S.C. § 227(c)(5);
- 7 E. Costs, expenses, and attorneys' fees, to the extent permitted by law;
- 8 and
- 9 F. Such other or further relief as the Court deems just and proper.

10 **COUNT III**
11 **Violations of the TCPA, 47 U.S.C. § 227(b)**
12 **(Autodialed Call Violations)**

13 77. Plaintiff re-alleges and incorporates all foregoing allegations.

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

18 79. A text message is a “call” under the TCPA. *Satterfield v. Simon &*
19 *Schuster, Inc.*, 569 F.3d 946, 951 (9th Cir. 2009).

20 80. Defendant initiated or caused to be initiated text message calls to the
21 cellular telephone numbers of Plaintiff and the other members of the class using an
22 automatic telephone dialing system.

23 81. These calls were made to persons who did not consent to receive those texts
24 from Defendant.

25 82. Defendant violated the TCPA when it made the calls alleged herein.

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1 83. As a result of Defendant’s conduct, and pursuant to Section 227(b)(3) of
2 the TCPA, Plaintiff and the other members of the class were harmed and are each
3 entitled to a minimum of \$500 in damages for each violation.

4 84. Moreover, given the facts and circumstances here, including that
5 Defendant responded to Plaintiff’s multiple “STOP” commands indicating that it would
6 no longer text Plaintiff, it is apparent that injunctive relief is necessary to wrench
7 compliance. Plaintiff and the class therefore request an injunction against future
8 automated calls such as those at issue here, pursuant to 47 U.S.C. § 227(b)(3).

9 85. Because Defendant knew or should have known that neither Plaintiff nor
10 the class consented to receive these text messages to their cell phones—and/or willfully
11 caused such text message calls to be made to the cell phones of Plaintiff and the other
12 members of the class without their express consent—the Court should treble the amount
13 of statutory damages available to Plaintiff and the other members of the class, pursuant
14 to Section 227(b)(3) of the TCPA. *Krakauer v. Dish Network LLC*, 2017 WL 2242952
15 (M.D.N.C. May 22, 2017) (trebling TCPA damages after \$21M jury verdict in favor of
16 class).

17 86. Plaintiff, individually and on behalf of the class, respectfully requests that
18 the Court enter judgment against Defendant for:

- 19 A. Certification of the class as alleged herein;
- 20 B. A declaration that Defendant violated the TCPA as to Plaintiff and
21 the class;
- 22 C. Injunctive relief aimed at preventing these future automated calls to
23 plaintiff’s and the class’ cell phones;
- 24 D. Damages pursuant to 47 U.S.C. § 227(b)(3);
- 25 E. Costs, expenses, and attorneys’ fees, to the extent permitted by law;
26 and
- 27 F. Such other or further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: August 4, 2021

Respectfully submitted,

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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 Newegg Failed to Honor Opt-Out Requests for 'Shuffle' Event Texts](#)
