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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

10 BOBBY ETRI, individually and on
11 behalf of all others similarly situated,

12 *Plaintiff,*

13 vs.

14 AVIATOR NATION, INC.,

15 *Defendant.*

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.
(TCPA)**

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

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

5 **NATURE OF THE ACTION**

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

8 3. Defendant is a retailer that sells clothin, apparel, and accessories online
9 and in store locations across the nation. To promote its services, Defendant engages in
10 aggressive unsolicited marketing, harming thousands of consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
14 damages on behalf of himself and members of the Class, and any other available legal
15 or equitable remedies.

16 **JURISDICTION AND VENUE**

17 5. This Court has federal question subject matter jurisdiction over this action
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper
21 in this District because Defendant’s principal address is located in this district,
22 Defendant directs, markets, and provides its business activities to this District, and
23 because Defendant’s unauthorized marketing scheme was directed by Defendant to
24 consumers in this District.

25 **PARTIES**

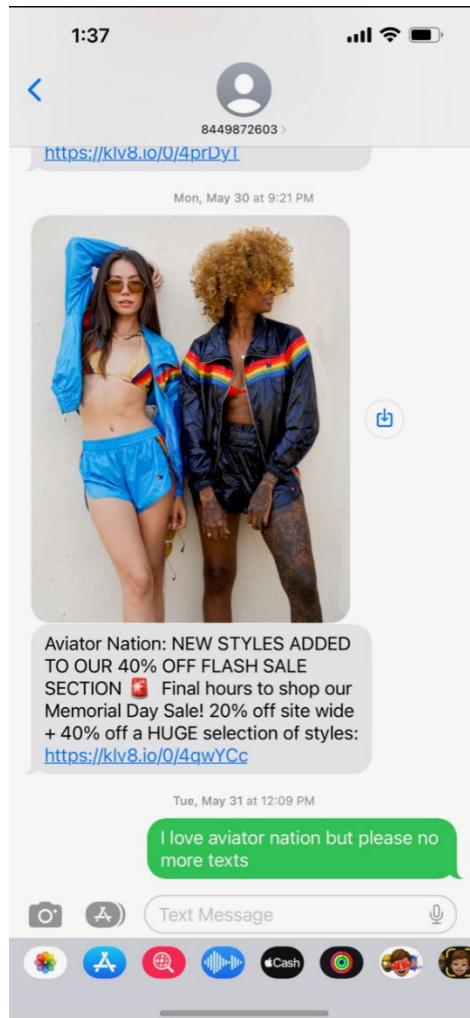
26 7. Plaintiff is a natural person who, at all times relevant to this action, was a
27 resident Miami-Dade County, Florida.

1 8. Defendant is a California corporation whose principal office is located at
2 6363 Regen Street, Huntington Park, CA 90255. Defendant directs, markets, and
3 provides its business activities throughout the United States, including throughout the
4 state of California.

5 9. Unless otherwise indicated, the use of Defendant's name in this
6 Complaint includes all agents, employees, officers, members, directors, heirs,
7 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,
8 and insurers of Defendant.

9 **FACTUAL ALLEGATIONS**

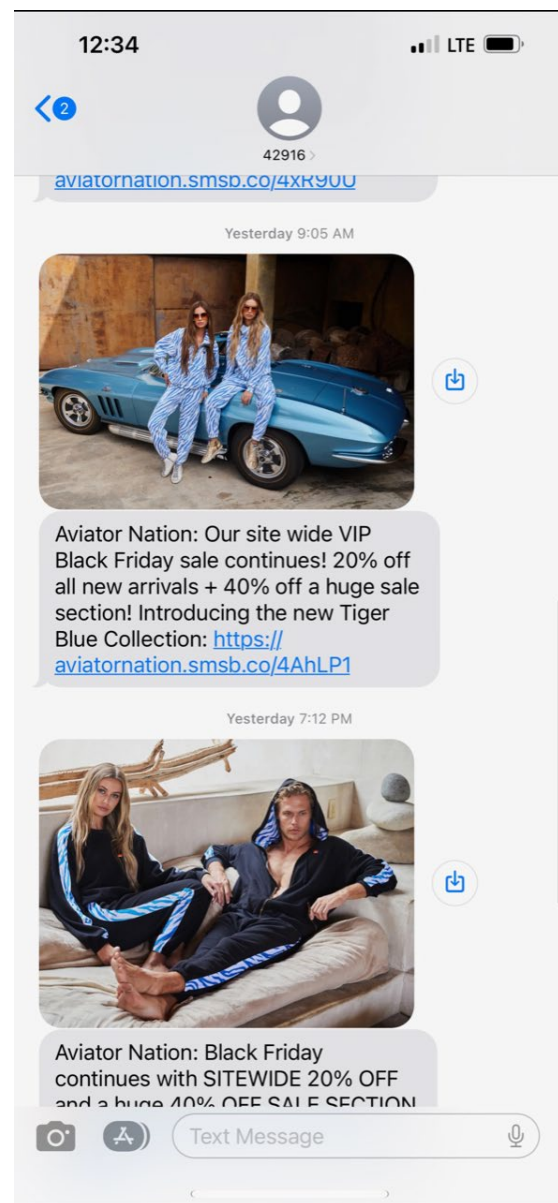
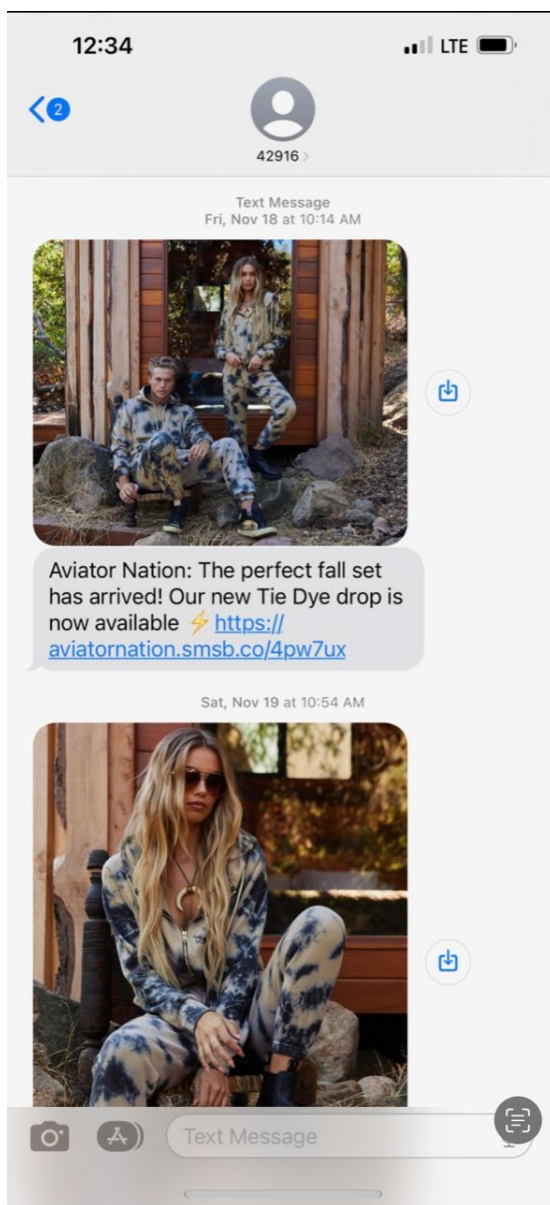
10 10. Over the past year, Defendant began sending telemarketing text messages
11 to Plaintiff's cellular telephone number ending in 4449 (the "4449 Number"):

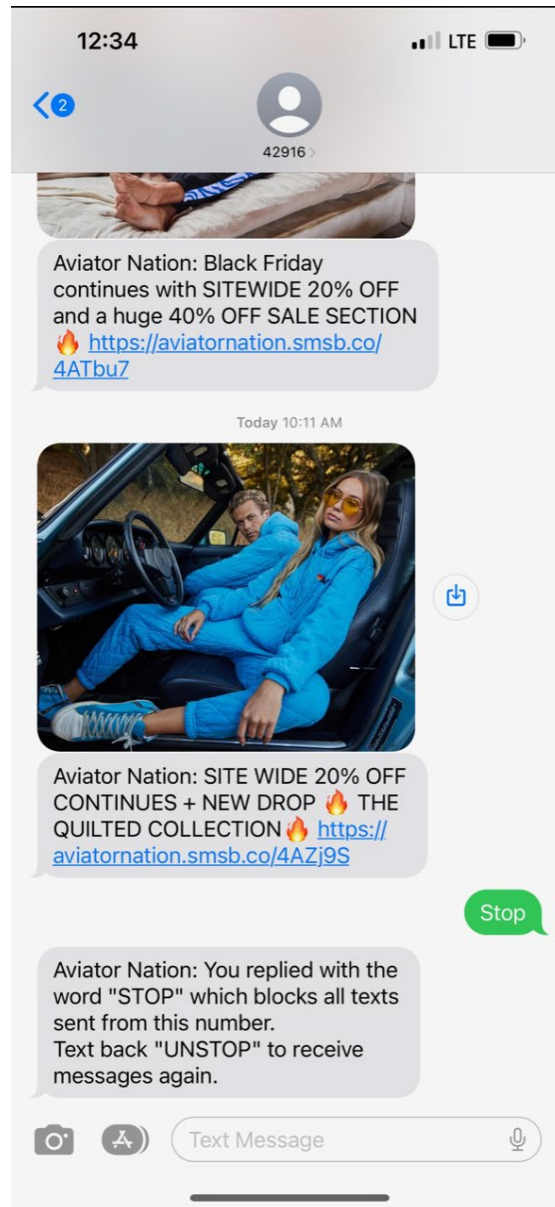


11. Defendant's text messages did not include instructions on how to opt-out.

12. On May 31, 2022, Plaintiff responded to Defendant with "...please no more texts" in an attempt to opt-out of any further text message communications with Defendant.

13. Despite Plaintiff's use of clear opt-out language, Defendant ignored Plaintiff's opt-out demand and sent Plaintiff dozens more telemarketing text message up through November 2022 including but not limited to the below:





14. Upon advice from counsel, Plaintiff texted only the word “Stop” to Defendant.

15. Defendant’s text messages were transmitted to Plaintiff’s cellular telephone, and within the time frame relevant to this action.

16. Defendant’s text messages constitute telemarketing because they encouraged the future purchase or investment in property, goods, or services, i.e., selling Plaintiff clothing and apparel.

1 17. The information contained in the text message advertises Defendant's
2 various discounts and promotions, which Defendant sends to promote its business.

3 18. Defendant sent or caused to be sent the subject texts within this judicial
4 district and, therefore, Defendant's violation of the TCPA occurred within this district.
5 Upon information and belief, Defendant caused other text messages to be sent to
6 individuals residing within this judicial district.

7 19. Defendant's texts were not made for an emergency purpose nor to collect
8 on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

9 20. To the extent that Defendant had any consent to contact Plaintiff, that
10 consent was expressly revoked when Plaintiff responded "...please no more texts" on
11 May 31, 2022.

12 21. The facts alleged suggest that Defendant does not have a written policy
13 for maintaining an internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

14 22. The facts alleged suggest that Defendant does not inform and train its
15 personnel engaged in telemarketing in the existence and the use of any internal do not
16 call list pursuant to 47 U.S.C. 64.1200(d)(2).

17 23. Plaintiff is the subscriber and sole user of the 4449 Number and is
18 financially responsible for phone service to the 4449 Number.

19 24. The text messages originated from telephone numbers 42916 and
20 8449872603, both numbers which upon information and belief are owned and operated
21 by or on behalf of Defendant.

22 25. Defendant's unsolicited text messages caused Plaintiff actual harm,
23 including invasion of his privacy, aggravation, annoyance, intrusion on seclusion,
24 trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and
25 caused disruption to his daily life.

26 26. Defendant's unsolicited text messages caused Plaintiff actual harm.
27 Specifically, Plaintiff estimates that he has wasted fifteen to thirty seconds reviewing
28

1 each of Defendant's unwanted messages. Each time, Plaintiff had to stop what he was
2 doing to either retrieve his phone and/or look down at the phone to review the
3 message.

4 27. Next, Plaintiff wasted approximately fifteen minutes locating and
5 retaining counsel for this case in order to stop Defendant's unwanted calls.

6 28. In all, Defendant's violations of the TCPA caused Plaintiff to waste at
7 least fifteen minutes of his time in addressing and attempting to stop Defendant's
8 solicitations.

9 **CLASS ALLEGATIONS**

10 **PROPOSED CLASS**

11 29. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,
12 on behalf of himself and all others similarly situated.

13 30. Plaintiff brings this case on behalf of the Class defined as follows:

14 **All persons within the United States who, within the**
15 **four years prior to the filing of this Complaint, were**
16 **sent a text message from Defendant or anyone on**
17 **Defendant's behalf, to said person's cellular**
telephone number *after* making a request to
Defendant to not receive future text messages.

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

21 **NUMEROSITY**

22 32. Upon information and belief, Defendant has placed violative calls to
23 cellular telephone numbers belonging to thousands of consumers throughout the
24 United States after they have revoked consent to be contacted. The members of the
25 Class, therefore, are believed to be so numerous that joinder of all members is
26 impracticable.

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

4 **COMMON QUESTIONS OF LAW AND FACT**

5 34. There are numerous questions of law and fact common to members of
6 the Class which predominate over any questions affecting only individual members of
7 the Class. Among the questions of law and fact common to the members of the Class
8 are:

- 9 a) Whether Defendant violated 47 C.F.R. § 1200(d).
10 b) Whether Defendant adhered to requests by Class members to stop
11 sending text messages to their telephone numbers;
12 c) Whether Defendant keeps records of text recipients who revoked
13 consent to receive texts;
14 d) Whether Defendant has any written policies for maintaining an
15 internal do not call list;
16 e) Whether Defendant cross-references opt-out requests between their
17 multiple telephone numbers.
18 f) Whether Defendant's conduct was knowing and willful;
19 g) Whether Defendant is liable for damages, and the amount of such
20 damages; and
21 h) Whether Defendant should be enjoined from such conduct in the
22 future.

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

COUNT I
Violations of the TCPA, 47 U.S.C. § 227(c)(2)
(On Behalf of Plaintiff and the Class)

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

41. The TCPA provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

42. Under 47 C.F.R. § 64.1200(d), “[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity. The procedures instituted must meet certain minimum standards, including:

“(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber’s name, if provided, and telephone number on the do-not call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber’s do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.”

47 C.F.R. § 64.1200(d)(3), (6)

1 43. Under 47 C.F.R. § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d)
2 are applicable to any person or entity making telephone solicitations or telemarketing
3 calls to wires telephone numbers.

4
5 “(e) The rules set forth in paragraph (c) and (d) of this section are applicable to
6 any person or entity making telephone solicitations or telemarketing calls to
7 wireless telephone numbers to the extent described in the Commission's Report
8 and Order, CG Docket No. 02-278, FCC 03-153, “Rules and Regulations
9 Implementing the Telephone Consumer Protection Act of 1991.”

10 47 C.F.R. § 64.1200(e)

11 44. Plaintiff and Class members made requests to Defendant not to receive
12 calls from Defendant.

13 45. Defendant failed to honor Plaintiff and Class members’ requests.

14 46. Upon information and belief, Defendant has not instituted procedures for
15 maintaining a list of persons who request not to receive telemarketing calls made by or
16 on behalf of their behalf, pursuant to 47 C.F.R. § 64.1200(d).

17 47. Because Plaintiff and members received more than one text message in a
18 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. §
19 64.1200(d), as described above, Defendant violated 47 U.S.C. § 227(c)(5).

20 48. As a result of Defendant’s violations of 47 U.S.C. § 227(c)(5), Plaintiff and
21 Class members are entitled to an award of \$500.00 in statutory damages, for each and
22 every negligent violation, pursuant to 47 U.S.C. § 227(c)(5).

23 49. As a result of Defendant’s violations of 47 U.S.C. § 227(c)(5), Plaintiff and
24 Class members are entitled to an award of \$1,500.00 in statutory damages, for each and
25 every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5).

26 50. Plaintiff and Class members also suffered damages in the form of invasion
27 of privacy.

1 51. Plaintiff and class members are also entitled to and seek injunctive relief
2 prohibiting Defendant's illegal conduct in the future, pursuant to 47 U.S.C. § 227(c)(5).

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for the
5 following relief:

- 6 a) An Order declaring that Defendant's actions, set out above, violate the
7 TCPA.
- 8 b) An order certifying this case as a class action on behalf of the Class as
9 defined above, and appointing Plaintiff as the representative of the Class
10 and Plaintiff's counsel as Class Counsel;
- 11 c) An award of actual and statutory damages for Plaintiff and each member
12 of the Class;
- 13 d) An injunction requiring Defendant to cease all unsolicited text messaging
14 activity, and to otherwise protect the interests of the Class;
- 15 e) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
16 California Code of Civil Procedure § 1021.5; and
- 17 f) Such further and other relief as the Court deems necessary.

18 **JURY DEMAND**

19 Plaintiff hereby demands a trial by jury.

20 **DOCUMENT PRESERVATION DEMAND**

21
22 Plaintiff demands that Defendant take affirmative steps to preserve all records,
23 lists, electronic databases or other itemizations associated with the allegations herein,
24 including all records, lists, electronic databases or other itemizations in the possession
25 of any vendors, individuals, and/or companies contracted, hired, or directed by
26 Defendant to assist in sending the alleged communications.

1 Dated: November 28, 2022

Respectfully submitted,

2
3 By: */s/ Scott Edelsberg*

4 **EDELSBERG LAW, P.A.**

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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: [Aviator Nation Sent 'Dozens' of Unauthorized Promotional Texts, Class Action Says](#)
