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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA

8 ZOE FEDEROFF, individually and on
behalf of all others similarly situated,

9 Plaintiff,

10 v.

11 FASHION NOVA, INC.,

12 Defendant.

Case No. '19CV0331 GPC JLB

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

13 Plaintiff Zoe Federoff, individually and on behalf of all others similarly
14 situated, complains and alleges as follows based on personal knowledge as to
15 herself, on the investigation of her counsel, and on information and belief as
16 to all other matters. Plaintiff believes that substantial evidentiary support will
17 exist for the allegations set forth in this complaint, after a reasonable
18 opportunity for discovery.

19 **NATURE OF ACTION**

20 Plaintiff brings this action for legal and equitable remedies resulting from
21 the illegal actions of Fashion Nova, Inc. in transmitting unsolicited, autodialed
22 SMS text message advertisements to her cellular telephone and the cellular
23 telephones of numerous other consumers across the country, in violation of
24 the federal Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

JURISDICTION AND VENUE

1. The Court has subject-matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

2. Personal jurisdiction and venue are proper this district because Defendant maintains its corporate headquarters in California and because Plaintiff's claims arose in substantial part in this district. The unsolicited, TCPA-violative SMS or MMS text messages at issue in this case, including those received by Plaintiff, were transmitted from automated telephone dialing equipment located in this district.

PARTIES

3. Plaintiff is, and at all times mentioned herein was, an individual and a “person” as defined by 47 U.S.C. § 153(39) and a resident of Tucson, AZ.

4. Defendant is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39). Defendant maintains, and at all times mentioned herein maintained, its corporate headquarters in Vernon, CA.

5. Non-Party Retention Rocket, LLC (“Retention Rocket”) is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39). Retention Rocket maintains, and at all times mentioned herein maintained, its corporate headquarters in San Diego, California. Defendant transmitted the SMS and MMS text message advertisements at issue in this case to Plaintiff and the members of the proposed Classes (defined below) via automated telephone dialing technology that is owned and maintained by its agent

1 Retention Rocket.¹ The text messages at issue in this case originated from
2 Retention Rocket's headquarters in San Diego, California.

3 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

4 6. In 1991, Congress enacted the TCPA to address consumer
5 complaints regarding certain abusive telemarketing practices. The TCPA
6 prohibits, inter alia, the use of automated telephone equipment, or
7 "autodialers," to make any call, including sending a text message, to a wireless
8 number absent an emergency or the "prior express consent" of the party
9 called. And in the case of "advertisements" or "telemarketing" calls or texts, as
10 defined by applicable regulations, the TCPA requires the "prior express written
11 consent" of the called party to initiate such a call or text via an autodialer.

12 7. Even in the face of the TCPA, automated and telemarketing calls
13 thrived, prompting the U.S. Federal Trade Commission to enact the National
14 Do Not Call Registry ("DNC List") pursuant to the Do-Not-Call Implementation
15 Act of 2003, 15 U.S.C. § 6101 et. seq. *See In re Rules & Regulations Implementing*
16 *the Tel. Consumer Prot. Act of 1991*, 18 FCC Rcd. 14014, 29 Comm. Reg. (P &
17 F) 830 (F.C.C. June 26, 2003). Registration for the DNC List began on June 27,
18 2003 and enforcement started on October 1, 2003.

19 8. The TCPA prohibits companies from initiating telephone
20 solicitations, via phone call or text message, to any number registered on the
21 DNC List. *See* 47 C.F.R. § 64.1200(c)(2).

22
23 ¹ *See* "Best Ecommerce Tools: 39 Apps to Grow a Multimillion-Dollar
24 Business Online," ShopifyPlus, June 10, 2018, available at <http://shopify.com/enterprise/ecommerce-tools-best> (last accessed Feb. 15, 2019).

1 9. Even after implementation of the DNC List, automated
2 telemarketing continues to plague American cellular phone subscribers. “Since
3 2009, the FTC has seen a significant increase in the number of illegal sales calls
4 Internet powered phone systems make it cheap and easy for scammers
5 to make illegal calls from anywhere in the world, and to display fake caller ID
6 information, which helps them hide from law enforcement.”²

7 10. Additionally, the TCPA prohibits companies from making calls or
8 sending texts to non-business phone numbers before 8 a.m. and after 9 p.m.
9 See 47 C.F.R. § 64.1200(c)(1).

10 11. According to findings by the Federal Communication Commission
11 (“FCC”), which is vested with authority to issue regulations implementing the
12 TCPA, autodialed calls and texts are prohibited because such transmissions
13 are a greater nuisance and invasion of privacy than live solicitation calls and
14 receiving and addressing such calls and texts can be costly and inconvenient.
15 The FCC also recognized that wireless customers are charged for such
16 incoming texts whether they pay in advance or after the texts are used.

17 12. One of the most prevalent bulk advertising methods employed by
18 companies today involves the use of “Short Message Services” (or “SMS”),
19 which is a system that allows for the transmission and receipt of short text
20 messages to and from wireless telephones. According to a recent study
21 conducted by the Pew Research Center, “Spam isn’t just for email anymore; it
22

23 ² Federal Trade Commission, National Do-Not-Call Registry, *available at*
24 <https://www.consumer.ftc.gov/articles/0108-national-do-not-call-registry> (last
accessed Feb. 10, 2019).

1 comes in the form of unwanted text messages of all kinds – from coupons to
2 phishing schemes – sent directly to user’s cell phones.”³

3 13. SMS text messages are directed to a wireless device through a
4 telephone number assigned to the device. When an SMS text message is
5 transmitted, the recipient’s wireless phone alerts the recipient that a message
6 has been received.

7 14. Unlike conventional advertisements, SMS message advertisements
8 can actually cost recipients money because wireless phone users must pay
9 their wireless providers either for each text message they receive or incur a
10 usage allocation deduction to their text messaging or data plan, regardless of
11 whether the message is authorized.

12 15. Moreover, the transmission of an SMS text message to a cellular
13 device is distracting and aggravating to the recipient and intrudes upon the
14 recipient’s seclusion.

15 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

16 16. Plaintiff is, and at all times mentioned herein was, the subscriber
17 of the cellular telephone number (520) ***-4681 (the “4681 Number”). The 4681
18 Number is, and at all times mentioned herein was, assigned to a cellular
19 telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

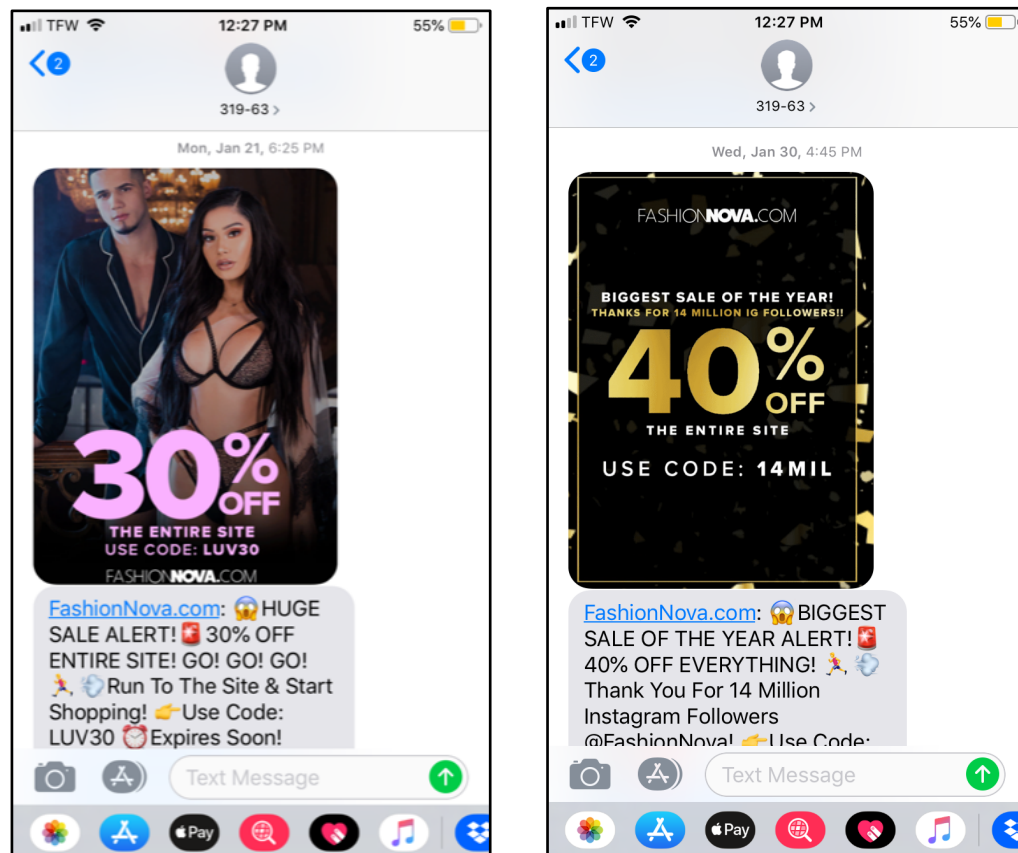
20 17. Plaintiff has occasionally purchased merchandise from Defendant
21 via Defendant’s website at <http://www.fashionnova.com>, but Plaintiff has never

22
23 ³ Amanda Lenhart, Cell Phones and American Adults: They Make Just as Many
24 Calls, but Text Less than Teens, Pew Research Center (2010),
<http://www.pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx> (last visited April 6, 2018).

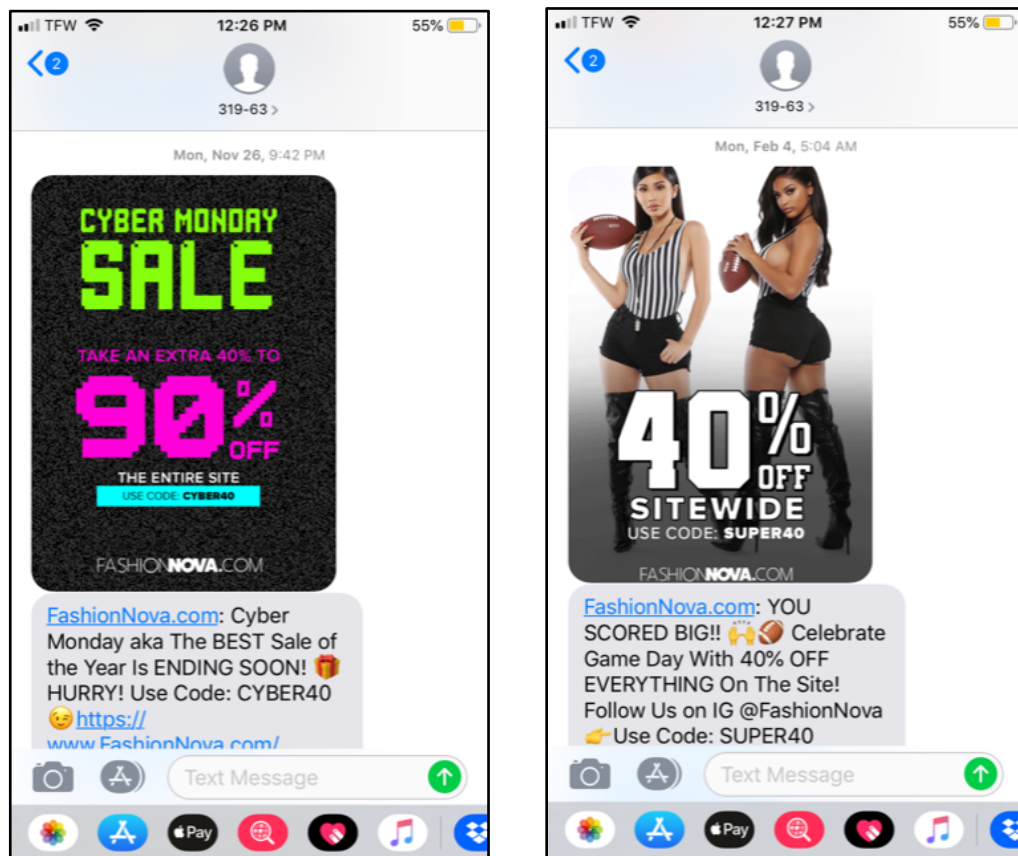
provided Defendant “prior express written consent” or any other form of consent to be sent Defendant’s text message solicitations and advertisements.

18. Between in or about early-2018 through the present, Defendant transmitted or caused to be transmitted, by itself or through an intermediary or intermediaries, including without limitation Retention Rocket, dozens of SMS and/or MMS text message advertisements to the 4681 Number without Plaintiff’s “prior express written consent.”

19. For example, on or about January 21, 2019 and January 30, 2019, Defendant transmitted or caused to be transmitted, by itself or through an intermediary or intermediaries, including without limitation Retention Rocket, the following texts to Plaintiff’s 4681 Number, as depicted in the following screenshots extracted from Plaintiff’s cellular device:



20. Moreover, Defendant sent its text message solicitations to Plaintiff and others similarly situated at all hours of the day, including before 8:00 a.m. and after 9:00 p.m. in the recipients' time zones. For example, Defendant transmitted or caused to be transmitted, by itself or through an intermediary or intermediaries, including without limitation Retention Rocket, text messages to Plaintiff's 4681 Number at or about 9:42 p.m. and 5:04 a.m. on or about November 26, 2018 and February 4, 2019, respectively, as shown in the following screenshots extracted from Plaintiff's cellular device:



21. The SMS text message advertisements sent by Defendant to the 4681 Number and to the telephone numbers of the members of the proposed Classes defined below originated from the telephone number 31963, which is a five-digit short code that was leased by Defendant or Defendant's agent(s)

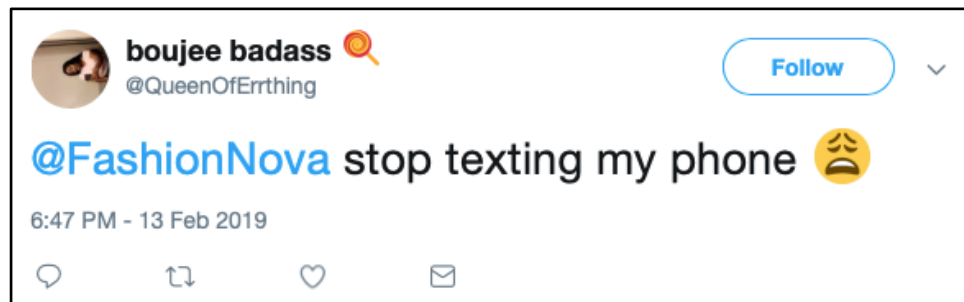
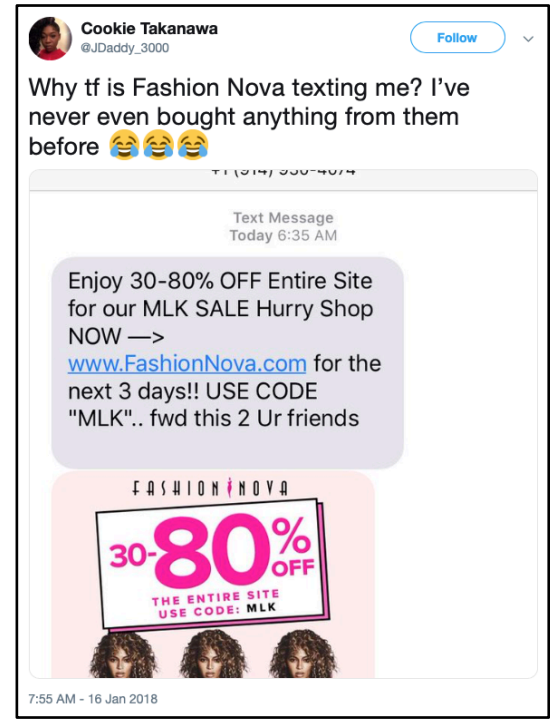
1 or affiliate(s), including without limitation Retention Rocket, and used for
2 operating Defendant's text message marketing program.

3 22. The hyperlinked FashionNova.com URLs that appear in the text
4 messages transmitted by Defendant to the 4681 Number and to the unnamed
5 Class members' numbers, examples of which are shown in the screenshots
6 above, re-direct to websites where Defendant advertises the commercial
7 availability of and sells its goods and services for profit. The domain name
8 FashionNova.com is leased or owned, and is operated and maintained, by
9 Defendant or its agent(s) or affiliate(s), and the webpages accessible therefrom
10 are hosted, operated, and maintained by Defendant or its agent(s) or affiliate(s)
11 on servers that are leased or owned by Defendant or its agent(s) or affiliate(s).

12 23. Because Plaintiff is alerted by her cellular device, by auditory or
13 visual means, whenever she receives a text message sent to the 4681 Number,
14 each unsolicited text message that Defendant transmitted to the 4681 Number
15 was invasive and intruded upon Plaintiff's seclusion. Plaintiff became
16 distracted and aggravated as a result of receiving Defendant's text messages,
17 which came at all hours of the day.

18 24. The text messages Defendant sent to Plaintiff's 4681 Number and
19 to the numbers of the members of the Classes did not include mechanisms for
20 the recipients to stop receiving such messages in the future.

21 25. Numerous other consumers have likewise been inundated with
22 Defendant's text message spam, also at all hours of the day and without a way
23 to make the messages stop, as reflected by the following sampling of
24 complaints "tweeted" to Defendant on Twitter:



26. All of the complained-of text messages sent by Defendant to the 4681 Number and to the numbers assigned to members of the putative Classes defined below constituted telephone solicitations as defined by 47 U.S.C. § 227(a)(4), “telemarketing” as defined by 47 C.F.R. § 64.1200(f)(12) & *id.* § 64.1200(a)(2), and “advertisements” as defined by 47 C.F.R. § 64.1200(f)(1), & *id.*

1 § 64.1200(a)(2). This is because Defendant sent the text messages to market
2 and advertise the commercial availability of its services and goods, for the
3 purpose of selling such goods to Plaintiff and the other members of the
4 proposed Classes for profit.

5 27. All of the complained of text messages sent by Defendant to the
6 4681 Number and to the numbers assigned to members of the putative Classes
7 were calls that were not for emergency purposes as defined by 47 U.S.C. §
8 227(b)(1)(A)(i) and 47 C.F.R. § 64.1200.

9 28. All telephone contact by Defendant or affiliates, subsidiaries, or
10 agents of Defendant, including without limitation Retention Rocket, to the 4681
11 Number and to the numbers assigned to members of the putative Classes
12 occurred via an “automated telephone dialing system” as defined by 47 U.S.C.
13 § 227(b)(1)(A).

14 29. Specifically, Defendant utilized an “automated telephone dialing
15 system” to transmit the aforementioned text messages to the 4681 Number
16 and to the numbers assigned to members of the putative Classes because such
17 messages were sent from a short-code telephone number used to message
18 consumers *en masse*; because Defendant’s automated dialing equipment
19 includes features substantially similar to a predictive dialer, inasmuch as it is
20 capable of making numerous calls or texts simultaneously (all without human
21 intervention); and because the hardware and software used by Defendant or
22 Defendant’s agent(s) or affiliate(s), including without limitation Retention
23 Rocket, to send such messages have the capacity to store, produce, and dial
24 random or sequential numbers, or receive and store lists of telephone

1 numbers, and to dial such numbers, *en masse*, in an automated fashion and
2 without human intervention. And indeed, Defendant actually transmitted the
3 text messages at issue in this case to Plaintiff and all other proposed class
4 members in an automated fashion and without human intervention, with
5 hardware and software provided by Retention Rocket and/or other agent(s) or
6 affiliate(s) that received and stored lists of telephone numbers and which then
7 dialed such numbers automatically.

8 30. Neither Plaintiff nor the other members of the proposed Classes
9 defined below provided their “prior express written consent” allowing
10 Defendant or any affiliate, subsidiary, or agent of Defendant to transmit
11 autodialed text message advertisements to the 4681 Number or to any of the
12 other class members’ mobile telephone numbers by means of an “automatic
13 telephone dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A) and
14 47 C.F.R. § 64.1200.

15 31. The rules set forth in paragraph (c) and (d) of 47 C.F.R. § 64.1200
16 are applicable to the Defendant because the text messages it sent from its
17 short codes were telephone solicitations to wireless telephone numbers to the
18 extent described in the Commission’s Report and Order, CG Docket No. 02-
19 278, FCC 03-153, “Rules and Regulations Implementing the Telephone
20 Consumer Protection Act of 1991.” 47 C.F.R. § 64.1200(e).

21 32. Whether or not Defendant’s text messages to Plaintiff and others
22 similarly situated were sent via ATDS, the unsolicited text messages were sent
23 pursuant to a common telemarketing scheme for which the Defendant, or any
24 agent or intermediary acting on its behalf, did not obtain the necessary consent

1 required by, and thus violated, the telemarketing and time-of-day telephone
2 solicitation restrictions of the TCPA and 47 C.F.R. § 64.1200(c)-(e).

3 33. Defendant transmitted more than one text message advertisement
4 over a 12-month period to Plaintiff's 4681 Number and to the cellular telephone
5 numbers of the other members of the proposed After-Hours Class defined
6 below outside of the permitted call times, that is, prior to 8:00 a.m. and after
7 9:00 p.m., in violation of the TCPA and the regulations set forth in 47 C.F.R. §
8 64.1200(c)(1).

9 CLASS ALLEGATIONS

10 34. "ATDS Class" Definition. Plaintiff brings this civil class action on
11 behalf of herself individually and as a representative of the following class of
12 persons (the "ATDS Class") entitled to statutory damages under the federal
13 TCPA:

14 All persons in the United States who, during the four
15 (4) years preceding the filing of this Class Action
16 Complaint through the date on which class
17 certification is granted, received one or more text
18 message promoting the sale of Defendant's goods or
services sent by Defendant or an affiliate, subsidiary,
or agent of Defendant, at a time when such persons
had not expressly consented in writing to be sent
such message(s).

19 35. "After-Hours Class" Definition. Additionally, Plaintiff brings this
20 civil class action on behalf of herself individually and as a representative of
21 the following class of persons (the "After-Hours Class") entitled to statutory
22 damages under the federal TCPA:

23 All persons in the United States who, within any 12-
24 month period during the four (4) years preceding the
filing of this Class Action Complaint through the date

1 on which class certification is granted, received more
2 than one text message promoting the sale of
3 Defendant's goods or services sent by Defendant or
an affiliate, subsidiary, or agent of Defendant before
8:00 a.m. and after 9:00 p.m. in the recipient's time
zone.

4 36. The "ATDS Class" and the "After-Hours Class" are at times herein
5 collectively referred to as the "Classes."

6 37. Defendant, its employees, and agents are excluded from the
7 Classes.

8 38. Plaintiff reserves the right to modify the definition of the Classes
9 (or add one or more subclasses) after further discovery.

10 39. Plaintiff and all members of the Classes have been impacted and
11 harmed by the acts of Defendant or its affiliates or subsidiaries.

12 40. This Class Action Complaint seeks injunctive relief and monetary
13 damages on behalf of Plaintiff and the members of each of the two Classes.

14 41. This action may properly be brought and maintained as a class
15 action pursuant to Fed. R. Civ. P. 23(a) and (b). The ATDS Class and the After-
16 Hours Class each satisfies the numerosity, typicality, adequacy, commonality,
17 predominance, and superiority requirements.

18 42. Upon application by Plaintiff's counsel for certification of the ATDS
19 Class and the After-Hours Class the Court may also be requested to utilize
20 and certify one or more additional subclass in the interests of manageability,
21 justice, or judicial economy.

22 43. Numerosity. A substantial number of persons comprise each of the
23 Classes, which are each believed to consist of thousands of persons dispersed
24 throughout the United States. It is, therefore, impractical to join each member

1 of the ATDS Class and the After-Hours Class as a named plaintiff. Further, the
2 size and relatively modest value of the claims of the individual members of
3 the Classes renders joinder impractical. Accordingly, utilization of the class
4 action mechanism is the most economically feasible means of determining and
5 adjudicating the merits of this litigation.

6 44. Typicality. While residing in the United States, Plaintiff received at
7 least one text message from Defendant from a short code, without having
8 provided her prior express written consent to Defendant. Additionally, while
9 residing in the United States, Plaintiff received within a 12-month period more
10 than one text message sent by Defendant or an affiliate, subsidiary, or agent
11 of Defendant before 8:00 a.m. or after 9:00 p.m. in Plaintiff's time zone.
12 Consequently, the claims of Plaintiff are typical of the claims of the members
13 of each of the Classes, and Plaintiff's interest is consistent with and not
14 antagonistic to those of the other members of either of the Classes she seeks
15 to represent. Plaintiff and all members of the ATDS Class have been impacted
16 by, and face continuing harm arising out of, Defendant's transmission of
17 autodialed text messages containing advertisements and telemarketing
18 material offering for sale Defendant's goods and services for profit. Plaintiff
19 and all members of the After-Hours Class have been impacted by, and face
20 continuing harm arising out of, Defendant's transmission of text messages
21 before 8:00 a.m. or after 9:00 p.m.

22 45. Adequacy. Plaintiff has no interests adverse to, or which conflict
23 with, the interests of the absent members of the Classes, and is able to fairly
24 and adequately represent and protect the interests of the Classes. Plaintiff has

1 raised viable statutory claims of the type reasonably expected to be raised by
2 members of the Classes and will vigorously pursue those claims. If necessary,
3 Plaintiff may seek leave to amend this Class Action Complaint to add
4 additional representatives or assert additional claims on behalf of either or
5 both Classes, as well as to add one or more class(es) or sub-class(es).

6 46. Competency of Class Counsel. Plaintiff has retained and is
7 represented by experienced, qualified, and competent counsel committed to
8 prosecuting this action. Counsel are experienced in handling complex class
9 action claims, in particular claims under the TCPA and other state and federal
10 data privacy and consumer protection statutes.

11 47. Commonality and Predominance. There are well-defined common
12 questions of fact and law that exist as to all members of the ATDS Class which
13 predominate over any questions affecting only individual members of the
14 ATDS Class. These common legal and factual questions, which do not vary
15 from class member to class member and may be determined without reference
16 to the individual circumstances of any class member, include (but are not
17 limited to) the following:

- 18 a. Whether Defendant or affiliates, subsidiaries, or agents of
19 Defendant transmitted advertising or telemarketing text
20 messages to Plaintiff's and Class members' cellular telephones;
- 21 b. Whether such text messages were sent using an "automatic
22 telephone dialing system";
- 23 c. Whether Defendant or affiliates, subsidiaries, or agents of
24 Defendant can meet their burden to show Defendant obtained

1 prior express written consent (as defined by 47 C.F.R.
2 64.1200(f)(8)) to send the text messages complained of, assuming
3 such an affirmative defense is raised;

4 d. Whether Defendant or affiliates, subsidiaries, or agents of
5 Defendant should be enjoined from engaging in such conduct
6 in the future.

7 48. There are well-defined common questions of fact and law that exist
8 as to all members of the After-Hours Class which predominate over any
9 questions affecting only individual members of the After-Hours Class. These
10 common legal and factual questions, which do not vary from class member to
11 class member and may be determined without reference to the individual
12 circumstances of any class member, include (but are not limited to) the
13 following:

14 a. Whether Defendant or affiliates, subsidiaries, or agents of
15 Defendant transmitted, within a 12-month period, more than
16 one text message to the cellular telephones of Plaintiff and Class
17 members before 8:00 a.m. and after 9:00 p.m.;

18 b. Whether such after-hours text messages constituted “telephone
19 solicitations” within the meaning of 47 C.F.R. § 64.1200(c);

20 c. Whether Defendant or affiliates, subsidiaries, or agents of
21 Defendant should be enjoined from engaging in such conduct
22 in the future.

23 49. Superiority. A class action is superior to other available methods
24 for the fair and efficient adjudication of this controversy because individual

1 litigation of the claims of all members of either of the Classes is impracticable.
2 Even if every member of the ATDS Class and the After-Hours Class could
3 afford to pursue individual litigation, the Court system could not. It would be
4 unduly burdensome to the courts in which individual litigation of numerous
5 cases would proceed. Individualized litigation would also present the potential
6 for varying, inconsistent or contradictory judgments, and would magnify the
7 delay and expense to all parties and to the court system resulting from
8 multiple trials of the same factual issues. By contrast, the maintenance of this
9 action as a class action, with respect to some or all of the issues presented
10 herein, presents few management difficulties, conserves the resources of the
11 parties and of the court system and protects the rights of each member of
12 each of the Classes. Plaintiff anticipates no difficulty in the management of
13 this action as a class action. Class wide relief is essential to compel compliance
14 with the TCPA. The interest of the members of the Classes in individually
15 controlling the prosecution of separate claims is small because the damages
16 in an individual action for violation of the TCPA are small. Management of
17 these claims is likely to present significantly fewer difficulties than are
18 presented in many class actions because the text messages at issue are all
19 automated and the members of the Classes can be readily located and notified
20 of this class action through Defendant's text message transmission records
21 and, if necessary, the records of cellular telephone providers.

22 50. Additionally, the prosecution of separate actions by individual
23 members of either of the Classes may create a risk of multiple adjudications
24 with respect to them that would, as a practical matter, be dispositive of the

1 interests of other members who are not parties to such adjudications, thereby
 2 substantially impairing or impeding the ability of such nonparty members of
 3 either of the Classes to protect their interests. The prosecution of individual
 4 actions members of either of the Classes could further establish inconsistent
 5 results and/or establish incompatible standards of conduct for Defendant.

6 51. Defendant or any affiliates, subsidiaries, or agents of Defendant
 7 have acted on grounds generally applicable to both of the Classes, thereby
 8 making final injunctive relief and corresponding declaratory relief with respect
 9 each of the Classes appropriate. Moreover, on information and belief, Plaintiff
 10 alleges that the TCPA violations complained of herein are substantially likely
 11 to continue in the future if an injunction is not entered.

12 CLAIMS FOR RELIEF

13 **FIRST CLAIM FOR RELIEF**

14 **Violation of the TCPA, 47 U.S.C. § 227(b)(3) & 47 U.S.C. § 227(b)(1)(A)
 (On Behalf of Plaintiff and the ATDS Class Members Against Defendant)**

15 52. Plaintiff incorporates by reference paragraphs 1-51 as if fully
 16 stated herein.

17 53. Plaintiff and each member of the ATDS Class received at least one
 18 text message from Defendant that promoted the sale of Defendant's goods or
 19 services and was sent using an automatic telephone dialing system. Each such
 20 text message constituted "advertising" or "telemarketing" material within the
 21 meaning of the TCPA and its implementing regulations. Neither Plaintiff not
 22 any other member of the ATDS Class provided Defendant prior express
 23 written consent to receive such text messages.

1 54. Defendant's use of an automatic telephone dialing system to
 2 transmit text message advertisements to telephone numbers assigned to
 3 cellular telephone service, including to Plaintiff's 4681 Number and the
 4 numbers of all members of the proposed ATDS Class, absent the requisite
 5 "prior express written consent," as set forth above, constituted violations of
 6 the TCPA by Defendant, including but not limited to violations of 47 U.S.C.
 7 § 227(b)(1)(A).

8 55. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A),
 9 Plaintiff and all ATDS Class members are entitled to, and do seek, injunctive
 10 relief prohibiting such conduct violating the TCPA in the future pursuant to
 11 47 U.S.C. § 227(b)(3)(A).

12 56. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A),
 13 Plaintiff and all ATDS Class members are also entitled to, and do seek, an
 14 award of statutory damages of \$500.00 (or \$1,500.00 for any willful or knowing
 15 violations) for each and every text message transmitted in violation of the
 16 TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

17 **SECOND CLAIM FOR RELIEF**
 18 **Violation of the TCPA, 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)(1)**
 19 **(On Behalf of Plaintiff and the After-Hours Class Members Against**
 20 **Defendant)**

21 57. Plaintiff incorporates by reference paragraphs 1-51 as if fully
 22 stated herein.

23 58. Plaintiff and each member of the After-Hours Class received,
 24 within a 12-month period, more than one text message that promoted the sale
 of Defendant's goods or services before 8:00 a.m. and after 9:00 p.m. in the

1 recipient's time zone. Each such text message constituted a telephone
2 solicitation call within the meaning of the TCPA and its implementing
3 regulations. Neither Plaintiff nor any other member of the After-Hours Class
4 provided Defendant prior express written consent to receive such text
5 messages.

6 59. Defendant's transmission of more than one text message
7 solicitation after 9:00 p.m. and before 8:00 a.m. within any 12-month period to
8 Plaintiff's 4681 Number and to each After-Hours Class member's cellular
9 telephone number, as set forth above, constituted violations of the TCPA by
10 Defendant, including but not limited to violations of 47 U.S.C. § 227(c)(5) and
11 the implementing regulations promulgated thereunder at 47 C.F.R. § 64.1200(c)-
12 (e), including but not limited to 47 C.F.R. § 64.1200(c)(1) and 47 C.F.R. §
13 64.1200(e).

14 60. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), and
15 the implementing regulations promulgated thereunder at 47 C.F.R. § 64.1200(c)-
16 (e), including but not limited to 47 C.F.R. § 64.1200(c)(1) and 47 C.F.R. §
17 64.1200(e), Plaintiff and all After-Hours Class members are entitled to, and do
18 seek, injunctive relief prohibiting such conduct violating the TCPA in the future
19 pursuant to 47 U.S.C. § 227(c)(5)(A).

20 61. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), and
21 the implementing regulations promulgated thereunder, including but not
22 limited to 47 C.F.R. § 64.1200(c)-(f) and 47 C.F.R. § 64.1200(e), Plaintiff and all
23 After-Hours Class members are also entitled to, and do seek, an award of
24 statutory damages of up to \$500.00 (or up to \$1,500.00 for any willful or

1 knowing violations) for each such violation of the TCPA pursuant to 47 U.S.C.
2 § 227(c)(5)(B).

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff Zoe Federoff prays for relief and judgment in
5 favor of herself and the members of the proposed Classes, as follows:

6 A. Statutory damages of \$500.00 (or \$1,500.00 for any willful or
7 knowing violations) for Plaintiff and each member of the ATDS Class for each
8 of Defendant's violations of 47 U.S.C. § 227(b)(1)(A) pursuant to 47 U.S.C.
9 § 227(b)(3);

10 B. Statutory damages of \$500.00 (or up to \$1,500.00 for any willful or
11 knowing violations) for Plaintiff and each member of the After-Hours Class for
12 each of Defendant's violations of 47 U.S.C. § 227(c)(5), and the implementing
13 regulations promulgated thereunder at 47 C.F.R. § 64.1200(c)-(e), including but
14 not limited to 47 C.F.R. § 64.1200(c)(1) and 47 C.F.R. § 64.1200(e), pursuant to 47
15 U.S.C. § 227(c)(5)(B);

16 D. Injunctive relief prohibiting such violations of the TCPA in the
17 future pursuant to 47 U.S.C. § 227(b)(3)(A) and 47 U.S.C. § 227(c)(5)(A);

18 E. An award of attorneys' fees and costs to counsel for Plaintiff and
19 the Classes; and

20 F. An Order certifying this action to be a proper class action pursuant
21 to Federal Rule of Civil Procedure 23, establishing the Classes proposed herein
22 and any Subclasses the Court deems appropriate, finding that Plaintiff is a
23 proper representative of the Classes, and appointing the law firms
24 representing Plaintiff as counsel for the Classes.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Classes, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims so triable.

Dated: February 15, 2019

Respectfully submitted,

HEDIN HALL LLP

By: s/ Frank S. Hedin
Frank S. Hedin

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*Counsel for Plaintiff and the Putative
Classes*

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

ZOE FEDEROFF, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff Pima Co., AZ
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)
Frank S. Hedin, HEDIN HALL LLP, Four Embarcadero Center, Ste 1400
San Francisco, CA 94104, Telephone: (415) 766-3534

DEFENDANTS

FASHION NOVA, INC.

County of Residence of First Listed Defendant Los Angeles Co., CA
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

'19CV0331 GPC JLB

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 SSD 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):

Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227

Brief description of cause:

Transmission of autodialed text message advertisements absent the requisite consent.

VII. REQUESTED IN COMPLAINT:

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

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

02/15/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Frank S. Hedin

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: [Fashion Nova Hit with Class Action in California Over Allegedly Impermissible Text Messages \[UPDATE: VOLUNTARY DISMISSAL\]](#)
