

1 **EDELSBERG LAW, P.A.**
2 Scott Edelsberg, Esq. (CA Bar No. 330990)
3 1925 Century Park E #1700
4 Los Angeles, CA 90067
5 Telephone: 305-975-3320
6 scott@edelsberglaw.com

Counsel for Plaintiff and Proposed Class

7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**

10 CHRIS GOLDEN,
11 individually and on behalf of all others
12 similarly situated,

Plaintiff,

13 vs.

14 HILLSIDE HOLISTIC d/b/a
15 HELLO CANNABIS VISTA,

Defendant.

Case No. '21CV1591 TWR BLM

CLASS ACTION

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

JURY TRIAL DEMANDED

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CLASS ACTION COMPLAINT

1. Plaintiff Chris Golden, brings this action against Defendant, Hillside Holistic d/b/a Hello Cannabis Vista, to secure redress for violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227.

NATURE OF THE ACTION

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

3. Defendant is a cannabis dispensary. To promote its services, Defendant engages in aggressive unsolicited marketing, harming thousands of consumers in the process.

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

JURISDICTION AND VENUE

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

6. The Court has personal jurisdiction over Defendant and venue is proper in this District because Defendant resides within this district, directs, markets, and provides its business activities to this District, and because Defendant’s unauthorized marketing scheme was directed by Defendant to consumers in this District.

PARTIES

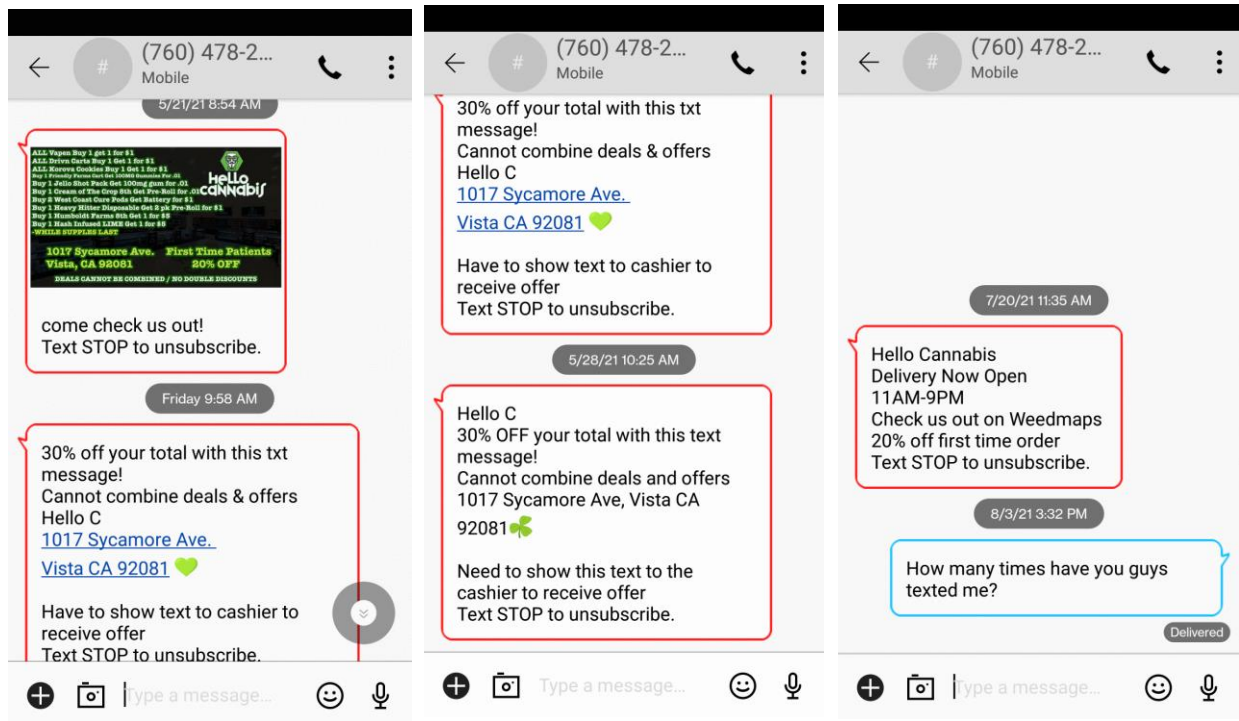
7. Plaintiff is a natural person who, at all times relevant to this action, was a resident of Orange County, California.

8. Defendant is a California corporation whose principal office is located at 1017 Sycamore Ave., Vista, California 92081. Defendant directs, markets, and provides its business activities throughout the United States, including throughout the state of California.

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

FACTUAL ALLEGATIONS

10. On or about May 21, 2021, May 28, 2021, and July 20, 2021, Defendant sent the following telemarketing text messages to Plaintiff’s cellular telephone number ending in 7424 (the “7424 Number”):



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

1 12. Defendant’s text messages constitute telemarketing because they
2 encouraged the future purchase or investment in property, goods, or services, i.e.,
3 selling Plaintiff cannabis products.

4 13. The information contained in the text message advertises Defendant’s
5 various discounts and promotions, which Defendant sends to promote its business.

6 14. Defendant sent the subject texts within this judicial district and, therefore,
7 Defendant’s violation of the TCPA occurred within this district. Upon information
8 and belief, Defendant caused other text messages to be sent to individuals residing
9 within this judicial district.

10 15. Defendant’s texts were not made for an emergency purpose or to collect
11 on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

12 16. At no point in time did Plaintiff provide Defendant with his express
13 written consent to be contacted.

14 17. Plaintiff is the subscriber and sole user of the 7424 Number and is
15 financially responsible for phone service to the 7424 Number.

16 18. Plaintiff has been registered with the national do not call registry since
17 October 21, 2009.

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

23 20. The text messages originated from telephone numbers 760-478-2118 and
24 760-478-2145, both numbers which upon information and belief are owned and
25 operated by Defendant or on behalf of Defendant.

26 21. Defendant’s unsolicited text messages caused Plaintiff actual harm,
27 including invasion of his privacy, aggravation, annoyance, intrusion on seclusion,
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1 trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and
2 caused disruption to his daily life.

3 22. Defendant's unsolicited text messages caused Plaintiff actual harm.
4 Specifically, Plaintiff estimates that he has wasted fifteen to thirty seconds reviewing
5 each of Defendant's unwanted messages. Each time, Plaintiff had to stop what he was
6 doing to either retrieve his phone and/or look down at the phone to review the
7 message.

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

10 24. In all, Defendant's violations of the TCPA caused Plaintiff to waste at
11 least fifteen minutes of his time in addressing and attempting to stop Defendant's
12 solicitations.

13 CLASS ALLEGATIONS

14 PROPOSED CLASS

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

17 26. Plaintiff brings this case on behalf of the Class defined as follows:

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

1 27. Defendant and its employees or agents are excluded from the Class.
2 Plaintiff does not know the number of members in the Class but believes the Class
3 members number in the several thousands, if not more.

4 **NUMEROSITY**

5 28. Upon information and belief, Defendant has placed violative calls to
6 cellular telephone numbers belonging to thousands of consumers throughout the
7 United States without their prior express consent. The members of the Class, therefore,
8 are believed to be so numerous that joinder of all members is impracticable.

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

12 **COMMON QUESTIONS OF LAW AND FACT**

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

- 17 a) Whether Defendant violated 47 C.F.R. § 64.1200(c);
- 18 b) Whether Defendant can meet its burden of showing that it obtained
19 prior express consent to make such calls;
- 20 c) Whether Defendant's conduct was knowing and willful;
- 21 d) Whether Defendant is liable for damages, and the amount of such
22 damages; and
- 23 e) Whether Defendant should be enjoined from such conduct in the
24 future.

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

3 **TYPICALITY**

4 32. Plaintiff's claims are typical of the claims of the Class members, as they
5 are all based on the same factual and legal theories.

6 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

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

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

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

21 35. The prosecution of separate actions by members of the Class would create
22 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
23 Defendant. For example, one court might enjoin Defendant from performing the
24 challenged acts, whereas another may not. Additionally, individual actions may be
25 dispositive of the interests of the Class, although certain class members are not parties
26 to such actions.

COUNT I

Violation of the TCPA, 47 U.S.C. § 227

(On Behalf of Plaintiff and the Do Not Call Registry Class)

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

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

10 38. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) “are applicable
11 to any person or entity making telephone solicitations or telemarketing calls to wireless
12 telephone numbers.”¹

13 39. 47 C.F.R. § 64.1200(d) further provides that “[n]o person or entity shall
14 initiate any call for telemarketing purposes to a residential telephone subscriber unless
15 such person or entity has instituted procedures for maintaining a list of persons who
16 request not to receive telemarketing calls made by or on behalf of that person or entity.”

17 40. Any “person who has received more than one telephone call within any
18 12-month period by or on behalf of the same entity in violation of the regulations
19 prescribed under this subsection may” may bring a private action based on a violation
20 of said regulations, which were promulgated to protect telephone subscribers’ privacy
21 rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c).

22 41. Defendant violated 47 C.F.R. § 64.1200(c) by initiating, or causing to be
23 initiated, telephone solicitations to telephone subscribers such as Plaintiff and the Do
24 Not Call Registry Class members who registered their respective telephone numbers on
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26 ¹ *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, Report
27 and Order, 18 FCC Rcd 14014 (2003) Available at https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf

1 the National Do Not Call Registry, a listing of persons who do not wish to receive
2 telephone solicitations that is maintained by the federal government.

3 42. Defendant violated 47 U.S.C. § 227(c)(5) because Plaintiff and the Do Not
4 Call Registry Class received more than one telephone call in a 12-month period made
5 by or on behalf of Defendant in violation of 47 C.F.R. § 64.1200, as described above.
6 As a result of Defendant's conduct as alleged herein, Plaintiff and the Do Not Call
7 Registry Class suffered actual damages and, under section 47 U.S.C. § 227(c), are
8 entitled, *inter alia*, to receive up to \$500 in damages for such violations of 47 C.F.R. §
9 64.1200.

10 43. To the extent Defendant's misconduct is determined to be willful and
11 knowing, the Court should, pursuant to 47 U.S.C. § 227(c)(5), treble the amount of
12 statutory damages recoverable by the members of the Do Not Call Registry Class.

13 **PRAYER FOR RELIEF**

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

- 16 a) An order certifying this case as a class action on behalf of the Class as
17 defined above, and appointing Plaintiff as the representative of the Class
18 and Plaintiff's counsel as Class Counsel;
- 19 b) An award of actual and statutory damages for Plaintiff and each member
20 of the Class;
- 21 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*,
22 Plaintiff seeks for himself and each member of the Class \$500.00 in
23 statutory damages for each and every violation pursuant to 47 U.S.C. §
24 277.
- 25 d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
26 §§ 227, *et seq.*, Plaintiff seeks for himself and each member of the Class
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1 treble damages, as provided by statute, up to \$1,500.00 for each and every
2 violation pursuant to 47 U.S.C. § 277.

- 3 e) An order declaring that Defendant's actions, as set out above, violate the
4 TCPA;
- 5 f) An injunction requiring Defendant to cease all unsolicited text messaging
6 activity, and to otherwise protect the interests of the Class;
- 7 g) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
8 California Code of Civil Procedure § 1021.5; and
- 9 h) Such further and other relief as the Court deems necessary.

10 **JURY DEMAND**

11 Plaintiff hereby demands a trial by jury.

12 **DOCUMENT PRESERVATION DEMAND**

13 Plaintiff demands that Defendant take affirmative steps to preserve all records,
14 lists, electronic databases or other itemizations associated with the allegations herein,
15 including all records, lists, electronic databases or other itemizations in the possession
16 of any vendors, individuals, and/or companies contracted, hired, or directed by
17 Defendant to assist in sending the alleged communications.

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19 Dated: September 10, 2021

Respectfully submitted,

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21 By: /s/ Scott Edelsberg

22 **EDELSBERG LAW, P.A.**

23 Scott Edelsberg, Esq. (CA Bar No. 330990)

24 1925 Century Park E #1700

25 Los Angeles, CA 90067

26 Telephone: 305-975-3320

27 scott@edelsberglaw.com

Counsel for Plaintiff and the Proposed Class

CIVIL COVER SHEET

21CV1591 TWR BLM

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

Chris Golden, individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Edelsberg Law, PA 1925 Century Park E #1700, Los Angeles, CA 90067 305-975-3320

DEFENDANTS

Hillside Holistic d/b/a Hello Cannabis Vista

County of Residence of First Listed Defendant San Diego County, CA (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, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq. Brief description of cause: This is a putative class action pursuant to the Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/10/2021 SIGNATURE OF ATTORNEY OF RECORD /s/ Scott Edelsberg

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Hello Cannabis Vista Facing Class Action Over Alleged Telemarketing Texts](#)
