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5
6 IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
7 SAN DIEGO DIVISION

8 CYNTHIA HAMBERG,
individually and on behalf of all others
9 similarly situated,

10 *Plaintiff,*

11 vs.

12 BECC HOLDINGS d/b/a NUGG
CLUB, a California Company,

13 *Defendant.*

Case No. '20CV1872 AJB JLB

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, Cynthia Hamberg (“Plaintiff”), brings this action against
3 Defendant, Becc Holdings d/b/a Nugg Club (“Defendant”), to secure redress for
4 violations of the Telephone Consumer Protection Act (“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 cannabis subscription service company. To promote its
9 services, Defendant engages in aggressive unsolicited marketing, harming thousands of
10 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 herself 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 directs, markets, and provides its business activities
22 to this District, and because Defendant’s unauthorized marketing scheme was directed
23 by Defendant to consumers in this District, including Plaintiff.

24 **PARTIES**

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

1 8. Defendant is a California company whose principal office is listed at
2 10857 Drury Lane, Lynwood, California 90262. 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 **THE TCPA**

10 10. The TCPA prohibits: (1) any person from calling a cellular telephone
11 number; (2) using an automatic telephone dialing system; (3) without the recipient’s
12 prior express consent. 47 U.S.C. § 227(b)(1)(A).

13 11. The TCPA defines an “automatic telephone dialing system” (“ATDS”) as
14 “equipment that has the capacity - (A) to store or produce telephone numbers to be
15 called, using a random or sequential number generator; and (B) to dial such numbers.”
16 47 U.S.C. § 227(a)(1).

17 12. In an action under the TCPA, a plaintiff must only show that the
18 defendant “called a number assigned to a cellular telephone service using an automatic
19 dialing system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d
20 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

21 13. The Federal Communications Commission (“FCC”) is empowered to
22 issue rules and regulations implementing the TCPA. According to the FCC’s findings,
23 calls in violation of the TCPA are prohibited because, as Congress found, automated
24 or prerecorded telephone calls are a greater nuisance and invasion of privacy than live
25 solicitation calls, and such calls can be costly and inconvenient. The FCC also
26 recognized that wireless customers are charged for incoming calls whether they pay in
27 advance or after the minutes are used. *Rules and Regulations Implementing the Telephone*

1 *Consumer Protection Act of 1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd
2 14014 (2003).

3 14. In 2012, the FCC issued an order tightening the restrictions for automated
4 telemarketing calls, requiring “prior express **written** consent” for such calls to wireless
5 numbers. *See In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
6 *1991*, 27 F.C.C.R. 1830, 1838 ¶ 20 (Feb. 15, 2012) (emphasis supplied).

7 15. To obtain express written consent for telemarketing calls, a defendant
8 must establish that it secured the plaintiff’s signature in a form that gives the plaintiff a
9 “‘clear and conspicuous disclosure’ of the consequences of providing the requested
10 consent....and having received this information, agrees unambiguously to receive such
11 calls at a telephone number the [plaintiff] designates.” *In re Rules & Regulations*
12 *Implementing the Tel. Consumer Prot. Act of 1991*, 27 F.C.C.R. 1830, 1837 ¶ 18, 1838 ¶ 20,
13 1844 ¶ 33, 1857 ¶ 66, 1858 ¶ 71 (F.C.C. Feb. 15, 2012).

14 16. The TCPA regulations promulgated by the FCC define “telemarketing”
15 as “the initiation of a telephone call or message for the purpose of encouraging the
16 purchase or rental of, or investment in, property, goods, or services.” 47 C.F.R. §
17 64.1200(f)(12). In determining whether a communication constitutes telemarketing, a
18 court must evaluate the ultimate purpose of the communication. *See Golan v. Veritas*
19 *Entm’t, LLC*, 788 F.3d 814, 820 (8th Cir. 2015).

20 17. “Neither the TCPA nor its implementing regulations ‘require an explicit
21 mention of a good, product, or service’ where the implication of an improper purpose
22 is ‘clear from the context.’” *Id.* (citing *Chesbro v. Best Buy Stores, L.P.*, 705 F.3d 913, 918
23 (9th Cir. 2012)).

24 18. “‘Telemarketing’ occurs when the context of a call indicates that it was
25 initiated and transmitted to a person for the purpose of promoting property, goods, or
26 services.” *Golan*, 788 F.3d at 820 (citing 47 C.F.R. § 64.1200(a)(2)(iii); 47 C.F.R. §
27

1 64.1200(f)(12); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act*
2 *of 1991*, 18 F.C.C. Rcd at 14098 ¶ 141, 2003 WL 21517853, at *49).

3 19. The FCC has explained that calls motivated in part by the intent to sell
4 property, goods, or services are considered telemarketing under the TCPA. *See In re*
5 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
6 14014, ¶¶ 139-142 (2003). This is true whether call recipients are encouraged to
7 purchase, rent, or invest in property, goods, or services during the call *or in the future*. *Id.*

8 20. In other words, offers “that are part of an overall marketing campaign to
9 sell property, goods, or services constitute” telemarketing under the TCPA. *See In re*
10 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd.
11 14014, ¶ 136 (2003).

12 21. If a call is not deemed telemarketing, a defendant must nevertheless
13 demonstrate that it obtained the plaintiff’s prior express consent. *See In the Matter of*
14 *Rules and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, 30 FCC Rcd. 7961,
15 7991-92 (2015) (requiring express consent “for non-telemarketing and non-advertising
16 calls”).

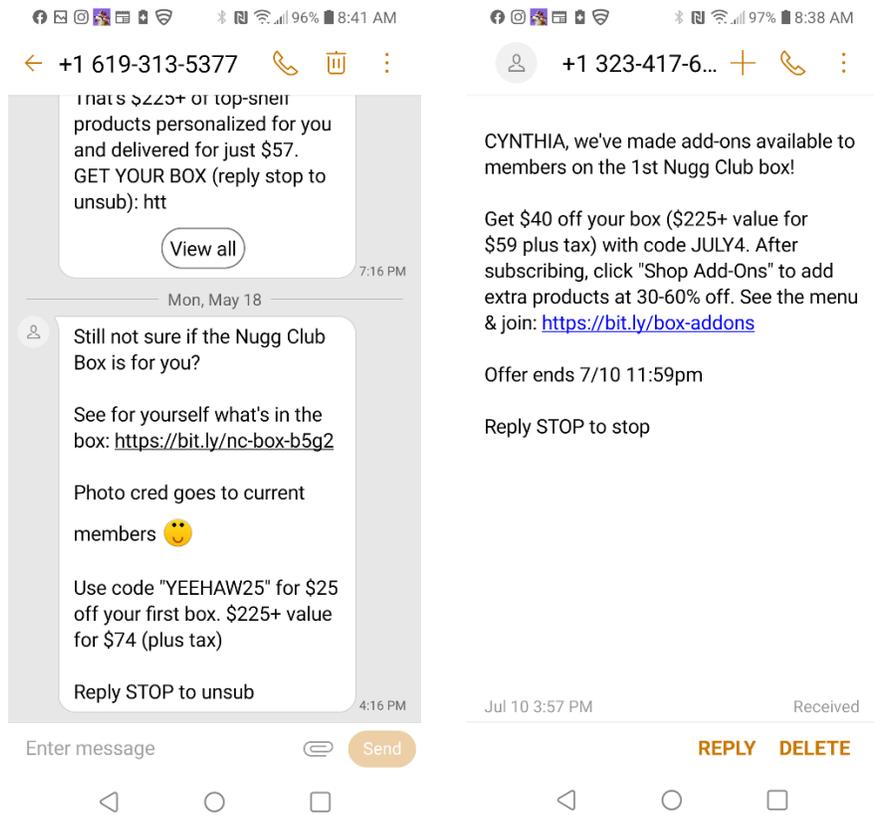
17 22. Further, the FCC has issued rulings and clarified that consumers are
18 entitled to the same consent-based protections for text messages as they are for calls to
19 wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009)
20 (The FCC has determined that a text message falls within the meaning of “to make any
21 call” in 47 U.S.C. § 227(b)(1)(A)); *Toney v. Quality Res., Inc.*, 2014 WL 6757978, at *3
22 (N.D. Ill. Dec. 1, 2014) (Defendant bears the burden of showing that it obtained
23 Plaintiff’s prior express consent before sending him the **text message**). (emphasis
24 added).

25 23. As recently held by the United States Court of Appeals for the Ninth
26 Circuit: “Unsolicited telemarketing phone calls or text messages, by their nature, invade
27 the privacy and disturb the solitude of their recipients. A plaintiff alleging a violation
28

1 under the TCPA ‘need not allege any *additional* harm beyond the one Congress has
2 identified.’” *Van Patten v. Vertical Fitness Grp.*, No. 14-55980, 2017 U.S. App. LEXIS
3 1591, at *12 (9th Cir. May 4, 2016) (quoting *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549
4 (2016) (emphasis original)).

5 **FACTUAL ALLEGATIONS**

6 24. Over the past year, Defendant sent numerous telemarketing text messages
7 to Plaintiff’s cellular telephone number ending in 9646 (the “9646 Number”) including
8 but not limited to the following which were received on May 18, 2020 and July 10, 2020:



1 25. Defendant's text messages were transmitted to Plaintiff's cellular
2 telephone, and within the time frame relevant to this action.

3 26. Defendant's text messages constitute telemarketing because they
4 encouraged the future purchase or investment in property, goods, or services, i.e.,
5 selling Plaintiff cannabis products.

6 27. The information contained in the text message advertises Defendant's
7 various discounts and promotions, which Defendant sends to promote its business.

8 28. Plaintiff received the subject texts within this judicial district and,
9 therefore, Defendant's violation of the TCPA occurred within this district. Upon
10 information and belief, Defendant caused other text messages to be sent to individuals
11 residing within this judicial district.

12 29. At no point in time did Plaintiff provide Defendant with her express
13 written consent to be contacted using an ATDS.

14 30. Plaintiff is the subscriber and sole user of the 9646 Number and is
15 financially responsible for phone service to the 9646 Number.

16 31. The impersonal and generic nature of Defendant's text message
17 demonstrates that Defendant utilized an ATDS in transmitting the messages. *See Jenkins*
18 *v. LL Atlanta, LLC*, No. 1:14-cv-2791-WSD, 2016 U.S. Dist. LEXIS 30051, at *11
19 (N.D. Ga. Mar. 9, 2016) ("These assertions, combined with the generic, impersonal
20 nature of the text message advertisements and the use of a short code, support an
21 inference that the text messages were sent using an ATDS.") (citing *Legg v. Voice Media*
22 *Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D. Fla. 2014) (plaintiff alleged facts sufficient to
23 infer text messages were sent using ATDS; use of a short code and volume of mass
24 messaging alleged would be impractical without use of an ATDS); *Kramer v. Autobytel,*
25 *Inc.*, 759 F. Supp. 2d 1165, 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants
26 used an ATDS where messages were advertisements written in an impersonal manner
27 and sent from short code); *Hickey v. Voxernet LLC*, 887 F. Supp. 2d 1125, 1130; *Robbins*

1 *v. Coca-Cola Co.*, No. 13-CV-132-IEG NLS, 2013 U.S. Dist. LEXIS 72725, 2013 WL
2 2252646, at *3 (S.D. Cal. May 22, 2013) (observing that mass messaging would be
3 impracticable without use of an ATDS)).

4 32. The text messages originated from telephone number 619-313-5377 and
5 other numbers, all numbers which upon information and belief are owned and operated
6 by or on behalf of Defendant.

7 33. The number used by Defendant (619-313-5377) is known as a “long
8 code,” a standard 10-digit code that enables Defendant to send SMS text messages *en*
9 *masse*, while deceiving recipients into believing that the message was personalized and
10 sent from a telephone number operated by an individual.

11 34. Long codes work as follows: Private companies known as SMS gateway
12 providers have contractual arrangements with mobile carriers to transmit two-way SMS
13 traffic. These SMS gateway providers send and receive SMS traffic to and from the
14 mobile phone networks' SMS centers, which are responsible for relaying those messages
15 to the intended mobile phone. This allows for the transmission of a large number of
16 SMS messages to and from a long code.

17 35. Specifically, upon information and belief, Defendant utilized a
18 combination of hardware and software systems to send the text messages at issue in
19 this case. The systems utilized by Defendant have the capacity to store telephone
20 numbers using a random or sequential number generator, and to dial such numbers
21 from a list without human intervention.

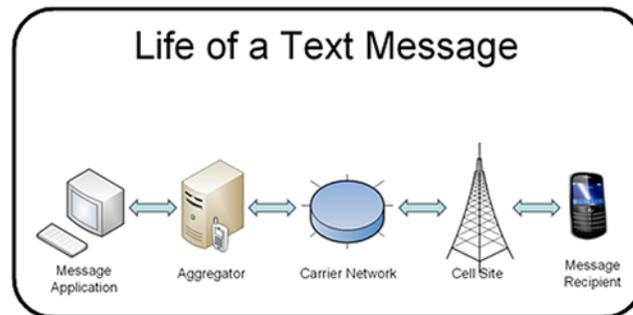
22 36. To send the text messages, Defendant used a messaging platform (the
23 “Platform”) that permitted Defendant to transmit thousands of automated text
24 messages without any human involvement.

25 37. The Platform has the capacity to store telephone numbers, which capacity
26 was in fact utilized by Defendant.

1 44. The above execution these instructions occurred seamlessly, with no
2 human intervention, and almost instantaneously. Indeed, the Platform is capable of
3 transmitting thousands of text messages following the above steps in minutes, if not
4 less.

5 45. Further, the Platform “throttles” the transmission of the text messages
6 depending on feedback it receives from the mobile carrier networks. In other words,
7 the platform controls how quickly messages are transmitted depending on network
8 congestion. The platform performs this throttling function automatically and does not
9 allow a human to control the function.

10 46. The following graphic summarizes the above steps and demonstrates that
11 the dialing of the text messages at issue was done by the Platform automatically and
12 without any human intervention:



18 47. Defendant’s unsolicited text messages caused Plaintiff actual harm,
19 including invasion of her privacy, aggravation, annoyance, intrusion on seclusion,
20 trespass, and conversion. Defendant’s text messages also inconvenienced Plaintiff and
21 caused disruption to her daily life.

22 48. Defendant’s unsolicited text messages caused Plaintiff actual harm.
23 Specifically, Plaintiff estimates that she has wasted fifteen to thirty seconds reviewing
24 each of Defendant’s unwanted messages. Each time, Plaintiff had to stop what she was
25 doing to either retrieve her phone and/or look down at the phone to review the
26 message.

1 49. Furthermore, Defendant’s text messages took up memory on Plaintiff’s
2 cellular phone. The cumulative effect of unsolicited text messages like Defendant’s
3 poses a real risk of ultimately rendering the phone unusable for text messaging purposes
4 as a result of the phone’s memory being taken up. *See*
5 <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that
6 text message solicitations present a “triple threat” of identity theft, unwanted cell phone
7 charges, and slower cell phone performance).

8 50. Defendant’s text messages also can slow cell phone performance by taking
9 up space on the recipient phone’s memory. *See*
10 <https://www.consumer.ftc.gov/articles/0350-text-message-spam#text> (finding that
11 spam text messages can slow cell phone performance by taking up phone memory
12 space).

13 CLASS ALLEGATIONS

14 PROPOSED CLASS

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

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

18 **No Consent Class: All persons in the United States**
19 **who, within four years prior to the filing of this**
20 **action, (1) were sent a text message by or on behalf**
21 **of Defendant, (2) using an automatic telephone**
22 **dialing system, (3) for the purpose of soliciting**
Defendant’s goods and services, (4) without prior
express consent of the recipient, or with the same
manner of purported consent Defendant claims to
have obtained from Plaintiff, if any.

23 53. Defendant and its employees or agents are excluded from the Class.
24 Plaintiff does not know the number of members in the Class but believes the Class
25 members number in the several thousands, if not more.

26 NUMEROSITY

1 54. Upon information and belief, Defendant has placed automated calls to
2 cellular telephone numbers belonging to thousands of consumers throughout the
3 United States without their prior express consent. The members of the Class, therefore,
4 are believed to be so numerous that joinder of all members is impracticable.

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

8 **COMMON QUESTIONS OF LAW AND FACT**

9 56. There are numerous questions of law and fact common to members of
10 the Class which predominate over any questions affecting only individual members of
11 the Class. Among the questions of law and fact common to the members of the Class
12 are:

- 13 a) Whether Defendant made non-emergency calls to Plaintiff's and Class
14 members' cellular telephones using an ATDS;
- 15 b) Whether Defendant can meet its burden of showing that it obtained
16 prior express written consent to make such calls;
- 17 c) Whether Defendant's conduct was knowing and willful;
- 18 d) Whether Defendant is liable for damages, and the amount of such
19 damages; and
- 20 e) Whether Defendant should be enjoined from such conduct in the
21 future.

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

27 **TYPICALITY**

1 58. Plaintiff's claims are typical of the claims of the Class members, as they
2 are all based on the same factual and legal theories.

3 **PROTECTING THE INTERESTS OF THE CLASS MEMBERS**

4 59. Plaintiff is a representative who will fully and adequately assert and protect
5 the interests of the Class, and has retained competent counsel. Accordingly, Plaintiff is
6 an adequate representative and will fairly and adequately protect the interests of the
7 Class.

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

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

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

24 **COUNT I**
25 **Violations of the TCPA, 47 U.S.C. § 227(b)**
26 **(On Behalf of Plaintiff and the Class)**

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

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

3 70. At all times relevant, Defendant knew or should have known that its
4 conduct as alleged herein violated the TCPA.

5 71. Defendant knew that it did not have prior express consent to make these
6 calls, and knew or should have known that its conduct was a violation of the TCPA.

7 72. Because Defendant knew or should have known that Plaintiff and Class
8 Members had not given prior express consent to receive its autodialed calls, the Court
9 should treble the amount of statutory damages available to Plaintiff and the other
10 members of the putative Class pursuant to § 227(b)(3) of the TCPA.

11 73. As a result of Defendant's violations, Plaintiff and the Class Members are
12 entitled to an award of \$1,500.00 in statutory damages, for each and every violation,
13 pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

14 **PRAYER FOR RELIEF**

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

- 17 a) An order certifying this case as a class action on behalf of the Class as
18 defined above, and appointing Plaintiff as the representative of the Class
19 and Plaintiff's counsel as Class Counsel;
- 20 b) An award of actual and statutory damages for Plaintiff and each member
21 of the Class;
- 22 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*,
23 Plaintiff seeks for herself and each member of the Class \$500.00 in
24 statutory damages for each and every violation pursuant to 47 U.S.C. §
25 227(b)(3)(B);
- 26 d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
27 §§ 227, *et seq.*, Plaintiff seeks for herself and each member of the Class

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(b)(3)(B) and § 277(b)(3)(C);

3 e) An order declaring that Defendant's actions, as set out above, violate the
4 TCPA;

5 f) A declaratory judgment that Defendant's telephone calling equipment
6 constitutes an automatic telephone dialing system under the TCPA;

7 g) An injunction requiring Defendant to cease all unsolicited text messaging
8 activity, and to otherwise protect the interests of the Class;

9 h) An injunction prohibiting Defendant from using, or contracting the use
10 of, an automatic telephone dialing system without obtaining, recipient's
11 consent to receive calls made with such equipment;

12 i) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
13 California Code of Civil Procedure § 1021.5; and

14 j) Such further and other relief as the Court deems necessary.

15 **JURY DEMAND**

16 Plaintiff hereby demand a trial by jury.

17
18 Dated: September 22, 2020

Respectfully submitted,

EDELSBERG LAW, PA

19
20 By: /s/ Scott Edelsberg
Scott Edelsberg, Esq.

21
22 *Counsel for Plaintiff and the Proposed Class*

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

Cynthia Hamberg individually and on behalf of all others similarly situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) EDELSBERG LAW, PA 20900 NE 30th Ave., Suite 417, Aventura, FL 33180 (305) 975-3320

DEFENDANTS

Becc Holdings d/b/a Nugg Club

County of Residence of First Listed Defendant Los Angeles 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)

'20CV1872 AJB JLB

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).

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

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, BANKRUPTCY, 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 09/22/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Scott Edelsberg

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

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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.
- 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: [Cannabis Subscription Service Nugg Club Hit with Class Action Over Alleged Telemarketing Texts](#)
