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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION**

DIEGO HENTSCHEL,
individually and on behalf of all others
similarly situated,

Plaintiff,

vs.

CUSTOMS BY ILENE, INC. d/b/a
DRIP CREATIONZ, a California
corporation,

Defendant.

Case No.

CLASS ACTION

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

JURY TRIAL DEMANDED

1 8. Defendant is a California corporation whose principal office is located at
2 1121 Olympic Drive, Corona, California 92881. 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”).

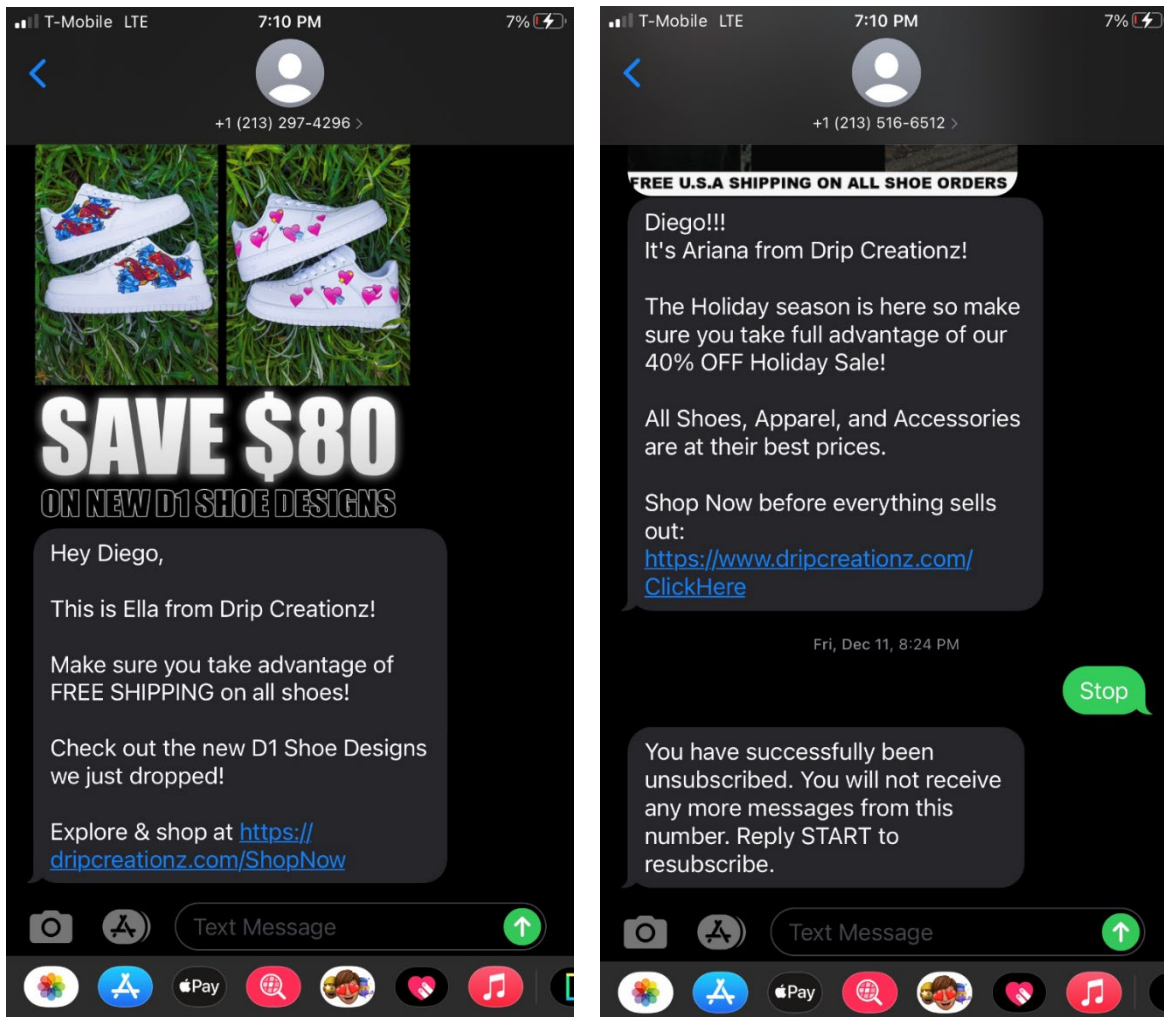
17 22. Further, the FCC has issued rulings and clarified that consumers are
18 entitled to the same consent-based protections for text messages as they are for calls to
19 wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569 F.3d 946, 952 (9th Cir. 2009)
20 (The FCC has determined that 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)).

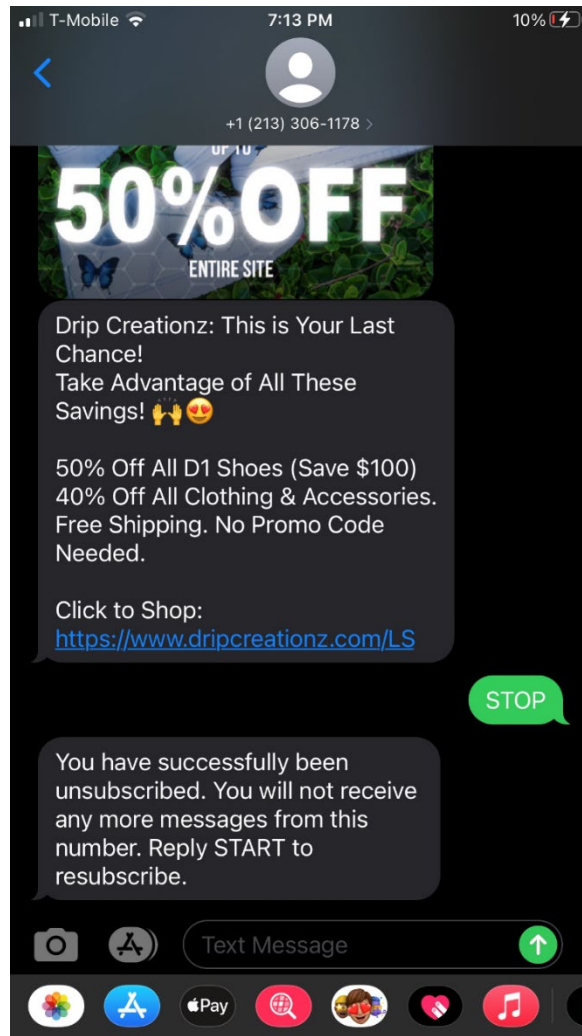
5 **FACTUAL ALLEGATIONS**

6 24. Over the past year, Defendant sent numerous telemarketing text messages
7 to Plaintiff’s cellular telephone number ending in 1596 (the “1596 Number”) including
8 the following on or about December 11, 2020:



1
2
3 25. On or about December 11, 2020, Plaintiff responded with the word
4 “Stop” in an attempt to opt-out of any further text message communications with
5 Defendant.

6 26. Despite Plaintiff’s use of standard opt-out language, Defendant ignored
7 Plaintiff’s opt-out demand and sent Plaintiff another telemarketing text message on or
8 about December 21, 2020. A screenshot of the December 21, 2020 text message is
9 below:



1 27. On or about December 21, 2020 Plaintiff again responded with the word
2 “STOP” in another attempt to opt-out of any further text communications with
3 Defendant.

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

6 29. Defendant’s text messages constitute telemarketing because they
7 encouraged the future purchase or investment in property, goods, or services, i.e.,
8 selling Plaintiff specialty clothing.

9 30. The information contained in the text message advertises Defendant’s
10 various discounts and promotions, which Defendant sends to promote its business.

11 31. Defendant’s texts were not made for an emergency purpose nor to collect
12 on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

13 32. Defendant sent the subject texts from within this judicial district and,
14 therefore, Defendant’s violation of the TCPA occurred within this district. Upon
15 information and belief, Defendant caused other text messages to be sent to individuals
16 residing within this judicial district.

17 33. At no point in time did Plaintiff provide Defendant with his express
18 written consent to be contacted using an ATDS.

19 34. Upon information and belief, Defendant does not have a written policy
20 for maintaining an internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

21 35. Upon information and belief, Defendant does not inform and train its
22 personnel engaged in telemarketing in the existence and the use of any internal do not
23 call list pursuant to 47 U.S.C. 64.1200(d)(2).

24 36. Plaintiff is the subscriber and sole user of the 1596 Number and is
25 financially responsible for phone service to the 1596 Number.

26 37. The impersonal and generic nature of Defendant’s text message
27 demonstrates that Defendant utilized an ATDS in transmitting the messages. *See Jenkins*
28

1 *v. LL Atlanta, LLC*, No. 1:14-cv-2791-WSD, 2016 U.S. Dist. LEXIS 30051, at *11
2 (N.D. Ga. Mar. 9, 2016) (“These assertions, combined with the generic, impersonal
3 nature of the text message advertisements and the use of a short code, support an
4 inference that the text messages were sent using an ATDS.”) (citing *Legg v. Voice Media*
5 *Grp., Inc.*, 20 F. Supp. 3d 1370, 1354 (S.D. Fla. 2014) (plaintiff alleged facts sufficient to
6 infer text messages were sent using ATDS; use of a short code and volume of mass
7 messaging alleged would be impractical without use of an ATDS); *Kramer v. Autobytel,*
8 *Inc.*, 759 F. Supp. 2d 1165, 1171 (N.D. Cal. 2010) (finding it "plausible" that defendants
9 used an ATDS where messages were advertisements written in an impersonal manner
10 and sent from short code); *Hickey v. Voxernet LLC*, 887 F. Supp. 2d 1125, 1130; *Robbins*
11 *v. Coca-Cola Co.*, No. 13-CV-132-IEG NLS, 2013 U.S. Dist. LEXIS 72725, 2013 WL
12 2252646, at *3 (S.D. Cal. May 22, 2013) (observing that mass messaging would be
13 impracticable without use of an ATDS)).

14 38. The text messages originated from telephone numbers 213-306-1178 and
15 213-516-6512, both numbers which upon information and belief are owned and
16 operated by or on behalf of Defendant.

17 39. The numbers used by Defendant are known as a “long code,” a standard
18 10-digit code that enables Defendant to send SMS text messages *en masse*, while
19 deceiving recipients into believing that the message was personalized and sent from a
20 telephone number operated by an individual.

21 40. Long codes work as follows: Private companies known as SMS gateway
22 providers have contractual arrangements with mobile carriers to transmit two-way SMS
23 traffic. These SMS gateway providers send and receive SMS traffic to and from the
24 mobile phone networks' SMS centers, which are responsible for relaying those messages
25 to the intended mobile phone. This allows for the transmission of a large number of
26 SMS messages to and from a long code.

1 41. Specifically, upon information and belief, Defendant utilized a
2 combination of hardware and software systems to send the text messages at issue in
3 this case. The systems utilized by Defendant have the capacity to store telephone
4 numbers using a random or sequential number generator, and to dial such numbers
5 from a list without human intervention.

6 42. To send the text messages, Defendant used a messaging platform (the
7 “Platform”) that permitted Defendant to transmit thousands of automated text
8 messages without any human involvement.

9 43. The Platform has the capacity to store telephone numbers, which capacity
10 was in fact utilized by Defendant.

11 44. The Platform has the capacity to generate sequential numbers, which
12 capacity was in fact utilized by Defendant.

13 45. The Platform has the capacity to dial numbers in sequential order, which
14 capacity was in fact utilized by Defendant.

15 46. The Platform has the capacity to dial numbers from a list of numbers,
16 which capacity was in fact utilized by Defendant.

17 47. The Platform has the capacity to dial numbers without human
18 intervention, which capacity was in fact utilized by Defendant.

19 48. The Platform has the capacity to schedule the time and date for future
20 transmission of text messages, which occurs without any human involvement.

21 49. To transmit the messages at issue, the Platform automatically executed the
22 following steps:

- 23 a) The Platform retrieved each telephone number from a list of numbers
- 24 in the sequential order the numbers were listed;
- 25 b) The Platform then generated each number in the sequential order
- 26 listed and combined each number with the content of Defendant’s
- 27

1 message to create “packets” consisting of one telephone number and
2 the message content;

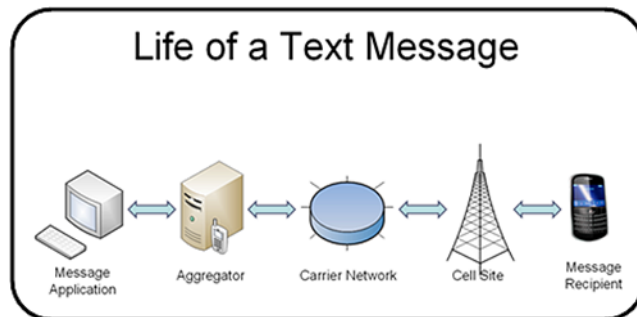
3 c) Each packet was then transmitted in the sequential order listed to an
4 SMS aggregator, which acts an intermediary between the Platform,
5 mobile carriers (e.g. AT&T), and consumers.

6 d) Upon receipt of each packet, the SMS aggregator transmitted each
7 packet – automatically and with no human intervention – to the
8 respective mobile carrier for the telephone number, again in the
9 sequential order listed by Defendant. Each mobile carrier then sent
10 the message to its customer’s mobile telephone.

11 50. The above execution these instructions occurred seamlessly, with no
12 human intervention, and almost instantaneously. Indeed, the Platform is capable of
13 transmitting thousands of text messages following the above steps in minutes, if not
14 less.

15 51. Further, the Platform “throttles” the transmission of the text messages
16 depending on feedback it receives from the mobile carrier networks. In other words,
17 the platform controls how quickly messages are transmitted depending on network
18 congestion. The platform performs this throttling function automatically and does not
19 allow a human to control the function.

20 52. The following graphic summarizes the above steps and demonstrates that
21 the dialing of the text messages at issue was done by the Platform automatically and
22 without any human intervention:
23
24
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53. Defendant’s unsolicited text messages caused Plaintiff actual harm, including invasion of his privacy, aggravation, annoyance, intrusion on seclusion, trespass, and conversion. Defendant’s text messages also inconvenienced Plaintiff and caused disruption to his daily life.

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

55. Next, Plaintiff wasted approximately fifteen minutes locating and retaining counsel for this case in order to stop Defendant’s unwanted calls.

56. In all, Defendant’s violations of the TCPA caused Plaintiff to waste at least fifteen minutes of her time in addressing and attempting to stop Defendant’s solicitations.

CLASS ALLEGATIONS

PROPOSED CLASSES

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

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

No Consent Class: All persons in the United States who, within four years prior to the filing of this action, (1) were sent a text message by or on behalf of Defendant, (2) using an automatic telephone

1 dialing system, (3) for the purpose of soliciting
2 Defendant's goods and services, (4) without prior
3 express consent of the recipient, or with the same
4 manner of purported consent Defendant claims to
5 have obtained from Plaintiff, if any.

6 **Internal Do Not Call Class: All persons within the**
7 **United States who, within the four years prior to the**
8 **filing of this Complaint, were sent a text message**
9 **from Defendant or anyone on Defendant's behalf,**
10 **to said person's cellular telephone number after**
11 **making a request to Defendant to not receive future**
12 **text messages.**

13 59. Defendant and its employees or agents are excluded from the Class.
14 Plaintiff does not know the number of members in the Class but believes the Class
15 members number in the several thousands, if not more.

16 **NUMEROSITY**

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

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

24 **COMMON QUESTIONS OF LAW AND FACT**

25 62. There are numerous questions of law and fact common to members of
26 the Class which predominate over any questions affecting only individual members of
27 the Class. Among the questions of law and fact common to the members of the Class
28 are:

- a) Whether Defendant made non-emergency calls to Plaintiff's and Class members' cellular telephones using an ATDS;
- b) Whether Defendant can meet its burden of showing that it obtained prior express written consent to make such calls;

- c) Whether Defendant adhered to requests by Class members to stop sending text messages to their telephone numbers;
- d) Whether Defendant keeps records of text recipients who revoked consent to receive texts;
- e) Whether Defendant has any written policies for maintaining an internal do not call list;
- f) Whether Defendant's conduct was knowing and willful;
- g) Whether Defendant is liable for damages, and the amount of such damages; and
- h) Whether Defendant should be enjoined from such conduct in the future.

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

TYPICALITY

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

PROTECTING THE INTERESTS OF THE CLASS MEMBERS

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

PROCEEDING VIA CLASS ACTION IS SUPERIOR AND ADVISABLE

66. A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all

1 members of the Class is economically unfeasible and procedurally impracticable. While
2 the aggregate damages sustained by the Class are in the millions of dollars, the individual
3 damages incurred by each member of the Class resulting from Defendant’s wrongful
4 conduct are too small to warrant the expense of individual lawsuits. The likelihood of
5 individual Class members prosecuting their own separate claims is remote, and, even if
6 every member of the Class could afford individual litigation, the court system would be
7 unduly burdened by individual litigation of such cases.

8 67. The prosecution of separate actions by members of the Class would create
9 a risk of establishing inconsistent rulings and/or incompatible standards of conduct for
10 Defendant. For example, one court might enjoin Defendant from performing the
11 challenged acts, whereas another may not. Additionally, individual actions may be
12 dispositive of the interests of the Class, although certain class members are not parties
13 to such actions.

14 **COUNT I**
15 **Violations of the TCPA, 47 U.S.C. § 227(b)**
16 **(On Behalf of Plaintiff and the Class)**

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

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

23 70. Defendant – or third parties directed by Defendant – used equipment
24 having the capacity to dial numbers without human intervention to make non-
25 emergency telephone calls to the cellular telephones of Plaintiff and the other members
26 of the Class defined below.

27 71. These calls were made without regard to whether or not Defendant had
28 first obtained express permission from the called party to make such calls. In fact,

1 Defendant did not have prior express consent to call the cell phones of Plaintiff and
2 the other members of the putative Class when its calls were made.

3 72. Defendant has, therefore, violated § 227(b)(1)(A)(iii) of the TCPA by
4 using an automatic telephone dialing system to make non-emergency telephone calls to
5 the cell phones of Plaintiff and the other members of the putative Class without their
6 prior express written consent.

7 73. Defendant knew that it did not have prior express consent to make these
8 calls, and knew or should have known that it was using equipment that constituted
9 an automatic telephone dialing system. The violations were therefore willful or
10 knowing.

11 74. As a result of Defendant's conduct and pursuant to § 227(b)(3) of the
12 TCPA, Plaintiff and the other members of the putative Class were harmed and are each
13 entitled to a minimum of \$500.00 in damages for each violation. Plaintiff and the
14 members of the Class are also entitled to an injunction against future calls. *Id.*

15 **COUNT II**
16 **Knowing and/or Willful Violation of the TCPA, 47 U.S.C. § 227(b)**
17 **(On Behalf of Plaintiff and the Class)**

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

20 76. At all times relevant, Defendant knew or should have known that its
21 conduct as alleged herein violated the TCPA.

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

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

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

4 **COUNT III**
5 **Violation of the TCPA, 47 U.S.C. § 227(c)(20**
6 **(On Behalf of Plaintiff and the Internal Do Not Call Class)**

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

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

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

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

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

47 C.F.R. § 64.1200(d)(3), (6)

5 83. Under 47 C.F.R § 64.1200(e) the rules set forth in 47 C.F.R. § 64.1200(d)
6 are applicable to any person or entity making telephone solicitations or telemarketing
7 calls to wires telephone numbers.
8

9 “(e) The rules set forth in paragraph (c) and (d) of this section are
10 applicable to any person or entity making telephone solicitations or
11 telemarketing calls to wireless telephone numbers to the extent described
12 in the Commission's Report and Order, CG Docket No. 02-278, FCC 03-
13 153, “Rules and Regulations Implementing the Telephone Consumer
14 Protection Act of 1991.”

47 C.F.R. § 64.1200(e)

15 84. Plaintiff and Class members made requests to Defendant not to receive
16 calls from Defendant.

17 85. Defendant failed to honor Plaintiff and members' requests.

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

21 87. Because Plaintiff and members received more than one text message in a
22 12-month period made by or on behalf of Defendant in violation of 47 C.F.R. §
23 64.1200(d), as described above, Defendant violated 47 U.S.C. § 227(c)(5).

24 88. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and
25 class members are entitled to an award of \$500.00 in statutory damages, for each and
26 every negligent violation, pursuant to 47 U.S.C. § 227(c)(5).
27

1 89. As a result of Defendant's violations of 47 U.S.C. § 227(c)(5), Plaintiff and
2 class members are entitled to an award of \$1,500.00 in statutory damages, for each and
3 every knowing and/or willful violation, pursuant to 47 U.S.C. § 227(c)(5).

4 90. Plaintiff and class members also suffered damages in the form of invasion
5 of privacy.

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

8 **PRAYER FOR RELIEF**

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

- 11 a) An order certifying this case as a class action on behalf of the Class as
12 defined above, and appointing Plaintiff as the representative of the Class
13 and Plaintiff's counsel as Class Counsel;
- 14 b) An award of actual and statutory damages for Plaintiff and each member
15 of the Class;
- 16 c) As a result of Defendant's negligent violations of 47 U.S.C. §§ 227, *et seq.*,
17 Plaintiff seeks for himself and each member of the Class \$500.00 in
18 statutory damages for each and every violation pursuant to 47 U.S.C. §
19 277(b)(3)(B);
- 20 d) As a result of Defendant's knowing and/or willful violations of 47 U.S.C.
21 §§ 227, *et seq.*, Plaintiff seeks for himself and each member of the Class
22 treble damages, as provided by statute, up to \$1,500.00 for each and every
23 violation pursuant to 47 U.S.C. § 277(b)(3)(B) and § 277(b)(3)(C);
- 24 e) An order declaring that Defendant's actions, as set out above, violate the
25 TCPA;
- 26 f) A declaratory judgment that Defendant's telephone calling equipment
27 constitutes an automatic telephone dialing system under the TCPA;

- 1 g) An injunction requiring Defendant to cease all unsolicited text messaging
2 activity, and to otherwise protect the interests of the Class;
- 3 h) An injunction prohibiting Defendant from using, or contracting the use
4 of, an automatic telephone dialing system without obtaining, recipient's
5 consent to receive calls made with such equipment;
- 6 i) An award of reasonable attorneys' fees and costs pursuant to, *inter alia*,
7 California Code of Civil Procedure § 1021.5; and
- 8 j) Such further and other relief as the Court deems necessary.

9 **JURY DEMAND**

10 Plaintiff hereby demands a trial by jury.

11 **DOCUMENT PRESERVATION DEMAND**

12 Plaintiff demands that Defendant take affirmative steps to preserve all records,
13 lists, electronic databases or other itemizations associated with the allegations herein,
14 including all records, lists, electronic databases or other itemizations in the possession
15 of any vendors, individuals, and/or companies contracted, hired, or directed by
16 Defendant to assist in sending the alleged communications.
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18

19 Dated: February 25, 2021

Respectfully submitted,

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21 By: */s/ Scott Edelsberg*

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