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7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION

11 JACQUELINE JACKSON, individually )	<b>CASE NO.</b>
12 and on behalf of all others similarly )	
13 situated, )	<b><u>CLASS ACTION COMPLAINT</u></b>
14 Plaintiff, )	
15 v. )	<b><u>JURY TRIAL DEMANDED</u></b>
16 EUPHORIA WELLNESS, LLC, )	
17 Defendant. )	

18 Plaintiff, Jacqueline Jackson (hereinafter “Plaintiff”), brings this class action  
19 under Rule 23 of the Federal Rules of Civil Procedure against Euphoria Wellness,  
20 LLC (“Euphoria Wellness” or “Defendant”) for its violations of the Telephone  
21 Consumer Protection Act, 47 U.S.C. § 227 (hereinafter “the TCPA”), and the  
22 regulations promulgated thereunder. In support, Plaintiff alleges as follows:

23 **PRELIMINARY STATEMENT**

24 1. Plaintiff brings this Class Action Complaint for damages, injunctive relief,  
25 and any other available legal or equitable remedies, resulting from the illegal actions  
26 of Defendant in negligently or willfully contacting Plaintiff on Plaintiff’s cellular  
27 telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227  
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1 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon  
2 personal knowledge as to herself and her own acts and experiences, and, as to all  
3 other matters, upon information and belief, including investigation conducted by her  
4 attorneys.

5 2. “Month after month, unwanted robocalls and texts, both telemarketing and  
6 informational, top the list of consumer complaints received by the [FCC].”<sup>1</sup> The  
7 TCPA is designed to protect consumer privacy by, among other things, prohibiting  
8 the making of autodialed or prerecorded-voice calls to cell phone numbers and  
9 failing to institute appropriate do-not-call procedures. 47 U.S.C. § 227(b)(1)(A)(iii);  
10 47 C.F.R. § 64.1200(d).

11 3. The TCPA was designed to prevent calls and texts like the ones described  
12 within this complaint, and to protect the privacy of citizens like Plaintiff.  
13 “Voluminous consumer complaints about abuses of telephone technology – for  
14 example, computerized calls dispatched to private homes – prompted Congress to  
15 pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

16 4. Additionally, the FCC has explicitly stated that the TCPA’s prohibition on  
17 automatic telephone dialing systems “encompasses both voice calls and text calls to  
18 wireless numbers including, for example, short message service (SMS) calls.”  
19 U.S.C.A. Const. Amend. 5; Telephone Consumer Protection Act of 1991, § 3(a), 47  
20 U.S.C. § 227(b)(1)(A)(iii). *Kramer v. Autobytel, Inc.*, 759 F. Supp. 2d 1165 (N.D.  
21 Cal. 2010).

22 5. In enacting the TCPA, Congress intended to give consumers a choice as to  
23 how creditors and telemarketers may call them and made specific findings that  
24 “[t]echnologies that might allow consumers to avoid receiving such calls are not  
25 universally available, are costly, are unlikely to be enforced, or place an inordinate  
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27  
28 <sup>1</sup> *In re Rules & Regs. Implementing the TCPA*, 30 FCC Rcd. 7961, ¶ 1 (2015).

1 burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end,  
2 Congress found that:

3 [b]anning such automated or prerecorded telephone calls to the home,  
4 except when the receiving party consents to receiving the call or when  
5 such calls are necessary in an emergency situation affecting the health  
6 and safety of the consumer, is the only effective means of protecting  
telephone consumers from this nuisance and privacy invasion.

7 *Id.* at § 12; *see also Martin v. Leading Edge Recovery Solutions, LLC*, 2012  
8 WL 3292838, at \*4 (N.D. Ill. Aug. 10, 2012) (citing Congressional findings on  
9 TCPA’s purpose).

10 6. In an action under the TCPA, a plaintiff must only show that the defendant  
11 “called a number assigned to a cellular telephone service using an automatic dialing  
12 system or prerecorded voice.” *Breslow v. Wells Fargo Bank, N.A.*, 857 F. Supp. 2d  
13 1316, 1319 (S.D. Fla. 2012), *aff’d*, 755 F.3d 1265 (11th Cir. 2014).

14 **JURISDICTION AND VENUE**

15 7. This Court has federal question subject matter jurisdiction pursuant to 28  
16 U.S.C. § 1331 and 47 U.S.C. § 227.

17 8. Venue in this judicial district is proper under 28 U.S.C. § 1391(b)(2),  
18 because a substantial part of the events or omissions giving rise to the claims in this  
19 case occurred in this District, including Defendant’s transmission of the unlawful  
20 and unwanted texts to Plaintiff.

21 9. The Court has personal jurisdiction over Defendant because it conducts  
22 business in this state, markets its services within this state, and has availed itself to  
23 the jurisdiction of this state by placing calls to Plaintiff and Class Members in and  
24 from this state.

25 **PARTIES**

26 10. Plaintiff’s domicile is in San Francisco, California.  
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1 11. Defendant is a Nevada Profit Corporation and citizen of the state of  
2 Nevada, listing its principal address at 7780 S. Jones Blvd., Suite 105, Las Vegas,  
3 NV 89139.

4 12. Defendant promotes and markets its services by calling wireless telephone  
5 users in violation of the TPCA.

6 13. Defendant, directly or through other persons, entities or agents acting on  
7 its behalf, conspired to, agreed to, contributed to, authorized, assisted with, and/or  
8 otherwise caused all of the wrongful acts and omissions, including the dissemination  
9 of the unsolicited texts that are the subject matter of this Complaint.

10 **FACTUAL ALLEGATIONS**

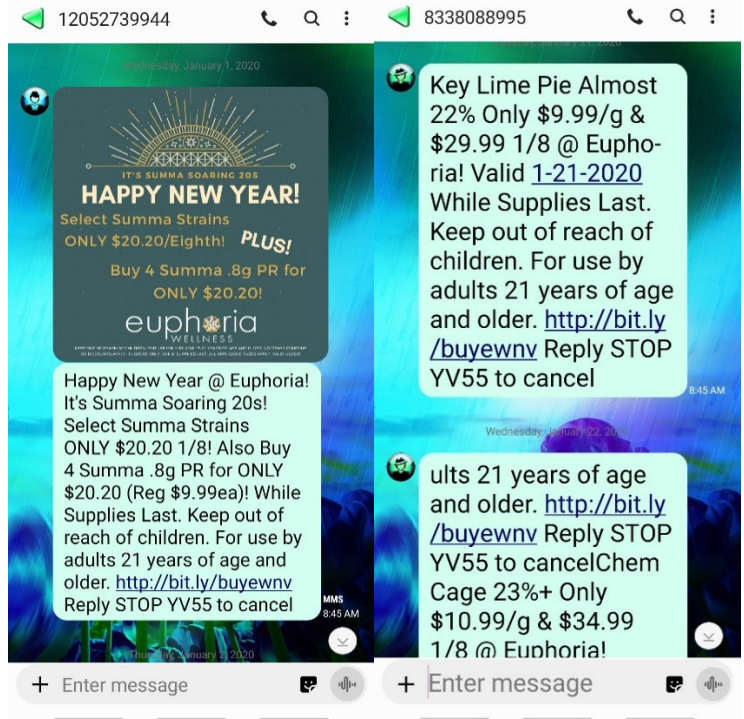
11 14. At all times relevant, Plaintiff, and at all times mentioned herein was, a  
12 “person” as defined by 47 U.S.C. § 153 (39).

13 15. Defendant is a citizen of the State of Nevada, and at all times mentioned  
14 herein was, a corporation and “persons,” as defined by 47 U.S.C. § 153(39).

15 16. At all times relevant Plaintiff resided in California, within this judicial  
16 district.

17 17. Defendant utilizes automated telemarketing text messages to market and  
18 advertise Defendant’s business and services, including numerous text messages to  
19 Plaintiff over the past year, examples attached below:  
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18. The text messages were transmitted to Plaintiff’s 5026 Number, and within the time period that is relevant to this action.

19. At no time did Plaintiff provide Plaintiff’s cellular number to Defendant through any medium, nor did Plaintiff consent to receive such unsolicited text messages.

20. Plaintiff has never signed-up for, and has never used, Defendant’s services, and has never had any form of business relationship with Defendant.

21. Plaintiff is the subscriber and sole user of the 5026 Number and is financially responsible for phone service to the 5026 Number, including the cellular costs and data usage incurred as a result of the unlawful text messages made to Plaintiff by Defendant.

22. Plaintiff has been registered with the national do-not-call registry since 2012.

23. Through the unsolicited messages, Defendant contacted Plaintiff on Plaintiff’s cellular telephone regarding an unsolicited service via an “automatic

1 telephone dialing system” (“ATDS”), as defined by 47 U.S.C. § 227(a)(1) and  
2 prohibited by 47 U.S.C. § 227(b)(1)(A).

3 24. Upon information and belief, this ATDS has the capacity to store or  
4 produce telephone numbers to be called, using a random or sequential number  
5 generator.

6 25. Upon information and belief, this ATDS has the capacity to store numbers  
7 and to dial numbers without human intervention.

8 26. Upon information and belief, Defendant used a combination of hardware  
9 and software systems which have the capacity to generate or store random or  
10 sequential numbers or to dial sequentially or randomly in an automated fashion  
11 without human intervention.

12 27. The impersonal and generic nature of the text messages that Defendant  
13 sent to Plaintiff further demonstrates that Defendant used an ATDS to send the  
14 subject messages.

15 28. The content of the text messages made to Plaintiff and the Class Members  
16 show that they were for the purpose of marketing, advertising, and promoting  
17 Defendant’s business and services to Plaintiff as part of an overall telemarketing  
18 strategy.

19 29. These messages were not for emergency purposes as defined by 47 U.S.C.  
20 § 227(b)(1)(A)(i).

21 30. Plaintiff did not provide Defendant or its agents prior express consent to  
22 receive messages to her cellular telephone; therefore, the unsolicited messages  
23 violated 47 U.S.C. § 227(b)(1)

24 31. Defendant is and was aware that it is transmitting unsolicited telemarketing  
25 text messages to Plaintiff and other consumers without their prior express consent.

26 32. Plaintiff was damaged by Defendant’s messages. In addition to using  
27 Plaintiff’s residential cellular data, phone storage, and battery life, her privacy was  
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1 wrongfully invaded, her seclusion was intruded upon, and Plaintiff has become  
2 understandably aggravated with having to deal with the frustration of repeated,  
3 unwanted messages, forcing her to divert attention away from her work and other  
4 activities. Not only did the receipt of the text messages distract Plaintiff away from  
5 her personal activities, Plaintiff was forced to spend time investigating the source of  
6 the calls and who sent them to her. *See Muransky v. Godiva Chocolatier, Inc.*, 905  
7 F.3d 1200, 1211 (11th Cir. 2018). (“[T]ime wasting is an injury in fact”.... “[A]  
8 small injury... is enough for standing purposes”).

### 9 CLASS ACTION ALLEGATIONS

10 33. Plaintiff brings this class action under Rule 23(a),(b)(2), and(b)(3) of the  
11 Federal Rules of Civil Procedure on behalf of herself and of a similarly situated  
12 “Class” or “Class Members” defined as:

13 No Consent Class: All persons within the United States who, within  
14 the four years prior to the filing of this Complaint, were sent a text  
15 message by Defendant or anyone on Defendant’ behalf, to said person’s  
16 cellular telephone number, advertising Defendant’s services, without  
17 the recipients prior express consent, using the same equipment used to  
call Plaintiff’s cellular telephone, in violation of the TCPA.

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

25 34. Excluded from the Class are Defendant, and any subsidiary or affiliate of  
26 Defendant, and the directors, officers and employees of Defendant or its subsidiaries  
27 or affiliates, and members of the federal judiciary.  
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1           35. This action has been brought and may properly be maintained as a class  
2 action against Defendant pursuant to Rule 23 of the Federal Rules of Civil Procedure  
3 because there is a well-defined community of interest in the litigation and the  
4 proposed Class is easily ascertainable. Plaintiff reserves the right to amend the Class  
5 definition if discovery and further investigation reveal that any Class should be  
6 expanded or otherwise modified.

7           36. **Numerosity:** At this time, Plaintiff does not know the exact number of  
8 Class Members, but among other things, given the nature of the claims and that  
9 Defendant's conduct consisted of standardized SPAM campaign texts placed to  
10 cellular telephone numbers, Plaintiff believes, at a minimum, there are greater than  
11 forty (40) Class Members. Plaintiff believes that the Class is so numerous that  
12 joinder of all members of the Class is impracticable and the disposition of their  
13 claims in a class action rather than incremental individual actions will benefit the  
14 Parties and the Court by eliminating the possibility of inconsistent or varying  
15 adjudications of individual actions.

16           37. Upon information and belief, a more precise Class size and the identities  
17 of the individual members thereof are ascertainable through Defendant's records,  
18 including, but not limited to Defendant's calls and marketing records.

19           38. Members of the Class may additionally or alternatively be notified of the  
20 pendency of this action by techniques and forms commonly used in class actions,  
21 such as by published notice, e-mail notice, website notice, fax notice, first class mail,  
22 or combinations thereof, or by other methods suitable to this class and deemed  
23 necessary and/or appropriate by the Court.

24           39. **Existence and Predominance of Common Questions of Fact and Law:**  
25 There is a well-defined community of common questions of fact and law affecting  
26 the Plaintiff and members of the Class. Common questions of law and/or fact exist  
27 as to all members of the Class and predominate over the questions affecting  
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1 individual Class members. These common legal and/or factual questions include,  
2 but are not limited to, the following:

- 3 a. Whether, within the four years prior to the filing of this Complaint,  
4 Defendant or its agents called (other than a message made for  
5 emergency purposes or made with the prior express consent of the  
6 called party) to a Class member using any automatic dialing to any  
7 telephone number assigned to a cellular phone service;
- 8 b. How Defendant obtained the numbers of Plaintiff and Class members;
- 9 c. Whether the dialing system used to call is an Automatic Telephone  
10 Dialing System;
- 11 d. Whether Defendant engaged in telemarketing when it sent the text  
12 messages which are the subject of this lawsuit;
- 13 e. Whether the calls made to Plaintiff and Class Members violate the  
14 TCPA and its regulations;
- 15 f. Whether Defendant willfully or knowingly violated the TCPA or the  
16 rules prescribed under it;
- 17 g. Whether Plaintiff and the members of the Class are entitled to statutory  
18 damages, treble damages, and attorney fees and costs for Defendant's  
19 acts and conduct;
- 20 h. Whether Plaintiff and members of the Class are entitled to a permanent  
21 injunction enjoining Defendant from continuing to engage in its  
22 unlawful conduct; and
- 23 i. Whether Plaintiff and the Class are entitled to any other relief.

24 40. One or more questions or issues of law and/or fact regarding Defendant's  
25 liability are common to all Class Members and predominate over any individual  
26 issues that may exist and may serve as a basis for class certification under Rule  
27 23(c)(4).  
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1           41. **Typicality:** Plaintiff’s claims are typical of the claims of the members of  
2 the Class. The claims of the Plaintiff and members of the Class are based on the  
3 same legal theories and arise from the same course of conduct that violates the  
4 TCPA.

5           42. Plaintiff and members of the Class each received at least one telephone  
6 call, advertising the Defendant’s hydroponics products or services, which Defendant  
7 placed or caused to be placed to Plaintiff and the members of the Class.

8           43. **Adequacy of Representation:** Plaintiff is an adequate representative of  
9 the Class because Plaintiff’s interests do not conflict with the interests of the  
10 members of the Class. Plaintiff will fairly, adequately and vigorously represent and  
11 protect the interests of the members of the Class and has no interests antagonistic to  
12 the members of the Class. Plaintiff has retained counsel competent and experienced  
13 in litigation in the federal courts, TCPA litigation, and class action litigation.

14           44. **Superiority:** A class action is superior to other available means for the fair  
15 and efficient adjudication of the claims of the Class. While the aggregate damages  
16 which may be awarded to the members of the Class are likely to be substantial, the  
17 damages suffered by individual members of the Class are relatively small. As a  
18 result, the expense and burden of individual litigation makes it economically  
19 infeasible and procedurally impracticable for each member of the Class to  
20 individually seek redress for the wrongs done to them. Plaintiff does not know of  
21 any other litigation concerning this controversy already commenced against  
22 Defendant by any member of the Class. The likelihood of the individual members  
23 of the Class prosecuting separate claims is remote. Individualized litigation would  
24 also present the potential for varying, inconsistent or contradictory judgments, and  
25 would increase the delay and expense to all parties and the court system resulting  
26 from multiple trials of the same factual issues. In contrast, the conduct of this matter  
27 as a class action presents fewer management difficulties, conserves the resources of  
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1 dial such numbers without human intervention to make non-emergency telephone  
2 calls to the cellular telephones of Plaintiff and the other members of the Class  
3 defined above.

4 50. These calls were made without regard to whether or not Defendant had  
5 first obtained express permission from the called party to make such calls. In fact,  
6 Defendant did not have prior express consent to call the cellular phones of Plaintiff  
7 and the other members of the putative Class when its calls were made.

8 51. Defendant has, therefore, violated Section 227(b)(1)(A)(iii) of the TCPA  
9 by using an automatic telephone dialing system to make non-emergency telephone  
10 calls to the cellular phones of Plaintiff and the other members of the putative Class  
11 without their prior express written consent.

12 52. The foregoing acts and omissions of Defendant constitute numerous and  
13 multiple violations of the TCPA, including but not limited to each and every one of  
14 the above-cited provisions of 47 U.S.C. § 227.

15 53. As a result of Defendant's negligent violations of 47 U.S.C. § 227, Plaintiff  
16 and the Class are entitled to an award of \$500.00 in statutory damages, for each and  
17 every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

18 54. At all relevant times, Defendant knew or should have known that its  
19 conduct as alleged herein violated the TCPA.

20 55. Defendant knew that it did not have prior express consent to make these  
21 calls and knew or should have known that its conduct violated the TCPA.

22 56. Because Defendant knew or should have known that Plaintiff and Class  
23 Members did not give prior express consent to receive autodialed calls, the Court  
24 should treble the amount of statutory damages available to Plaintiff and members of  
25 the Putative Class pursuant to Section 227(b)(3)(C).

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

4 58. Plaintiff and the Class are also entitled to and seek injunctive relief  
5 prohibiting such conduct in the future.

6 WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the  
7 Class members relief against Defendant, as set forth in the Prayer for Relief below.

8 **COUNT II**  
9 **Violation of the TCPA, 47 U.S.C. § 227**  
10 **(On Behalf of Plaintiff and the Do Not Call Registry Class)**

11 59. Plaintiff repeats and realleges the paragraphs 1 through 45 of this  
12 Complaint and incorporates them by reference herein.

13 60. The TCPA's implementing regulation, 47 C.F.R. § 64.1200(c),  
14 provides that "[n]o person or entity shall initiate any telephone solicitation" to "[a]  
15 residential telephone subscriber who has registered his or her telephone number on  
16 the national do-not-call registry of persons who do not wish to receive telephone  
17 solicitations that is maintained by the federal government."

18 61. 47 C.F.R. § 64.1200(e), provides that § 64.1200(c) and (d) "are  
19 applicable to any person or entity making telephone solicitations or telemarketing  
20 calls to wireless telephone numbers."<sup>2</sup>

21 62. 47 C.F.R. § 64.1200(d) further provides that "[n]o person or entity shall  
22 initiate any call for telemarketing purposes to a residential telephone subscriber  
23 unless such person or entity has instituted procedures for maintaining a list of  
24 persons who request not to receive telemarketing calls made by or on behalf of that  
25 person or entity."

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27 \_\_\_\_\_  
28 <sup>2</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278,  
Report and Order, 18 FCC Rcd 14014 (2003) Available at [https://apps.fcc.gov/edocs\\_public/attachmatch/FCC-03-153A1.pdf](https://apps.fcc.gov/edocs_public/attachmatch/FCC-03-153A1.pdf)



- b. Statutory damages of \$500 per call in violation of the TCPA;
- c. Willful damages at \$1,500 per call in violation of the TCPA;
- d. A declaration that Defendant's practices described herein violate the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(A)(iii);
- e. An injunction prohibiting Defendant from using an automatic telephone dialing system to call numbers assigned to cellular telephones without the prior express written consent of the called party;
- f. Reasonable attorney's fees and costs; and
- g. Such further and other relief as this Court deems reasonable and just.

**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury.

DATED: May 15, 2020

EDWARDS POTTINGER LLC

By: /s/ Seth M. Lehrman

Seth M. Lehrman  
Attorney for Plaintiff  
JACQUELINE JACKSON



CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

JACQUELINE JACKSON, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Seth M. Lehrman, Esq., EDWARDS POTTINGER LLC 425 North Andrews Avenue, Suite 2, Fort Lauderdale, FL 33301 Tel.: 954-524-2820, Fax: 954-524-2822, email: seth@epllc.com

DEFENDANTS

EUPHORIA WELLNESS, LLC,

County of Residence of First Listed Defendant (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: 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, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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): 47 U.S.C. § 227 et seq.

Brief description of cause: Telephone Consumer Protection Act (TCPA)

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 05/15/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Seth M. Lehrman

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Nevada Cannabis Dispensary Hit with Class Action Over Alleged Spam Texts](#)

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