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16 **UNITED STATES DISTRICT COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 **DANIEL KOZIEJA, Individually**
19 **and On Behalf of All Others**
20 **Similarly Situated,**

21 **Plaintiff,**

22 **v.**

23 **COMDATA INC.,**
24 **Defendant.**

Case No.: '18CV2533 LAB NLS

CLASS ACTION

**COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
PURSUANT TO THE TELEPHONE
CONSUMER PROTECTION ACT,
47 U.S.C. § 227, ET SEQ.**

JURY TRIAL DEMANDED

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INTRODUCTION

1
2 1. The plaintiff DANIEL KOZIEJA (“Mr. Kozieja” or “Plaintiff”) brings
3 this Class Action Complaint for damages, injunctive relief, and any other available
4 legal or equitable remedies, resulting from the illegal actions of defendant
5 COMDATA INC. (“Comdata” or “Defendant”) in negligently and/or intentionally
6 contacting Plaintiff on his cellular telephone, in violation of the Telephone
7 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*, (“TCPA”), thereby invading
8 Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to
9 himself and his own acts and experiences, and, as to all other matters, upon
10 information and belief, including investigation conducted by his attorneys.

JURISDICTION AND VENUE

11
12 2. This Court has federal question jurisdiction because this case arises
13 out of violation of federal law. 47 U.S.C. § 227(b).

14 3. Venue is proper in the United States District Court for the Southern
15 District of California pursuant to 28 U.S.C. § 1391 because Comdata:

- 16 (a) is authorized to conduct business in this district and has
17 intentionally availed itself of the laws by conducting business
18 in this district;
- 19 (b) does substantial business within this district;
- 20 (c) is subject to personal jurisdiction in this district; and
- 21 (d) Plaintiff was harmed by Defendant’s conduct within this
22 judicial district.

PARTIES

23
24 4. Mr. Kozieja is, and at all times relevant was, a citizen and resident of
25 the State of California, County of San Diego, City of Lemon Grove, and is, and at
26 all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(39).

27 5. Plaintiff is informed and believes, and thereon alleges, that Comdata
28 is, and at all times mentioned herein was, a privately held Delaware corporation

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1 with its principal place of business in Brentwood, Tennessee, is a “person” as
2 defined by 47 U.S.C. § 153(39).

3 6. Upon information and belief, Comdata is an active, registered
4 corporation with the State of California’s Secretary of State, and has a registered
5 agent for service in Sacramento, California.

6 7. Plaintiff alleges that at all times relevant herein, Defendant conducted
7 business in the State of California and in the County of San Diego, and within this
8 judicial district.

9 **FACTUAL ALLEGATIONS**

10 8. At all times relevant, Plaintiff did not have a business relationship
11 with Comdata.

12 9. On or about August 15, 2018, at approximately 1:21 p.m., Comdata
13 began sending Plaintiff text messages to his cellular telephone ending in “3058”,
14 from the short code 303-52. The August 15, 2018, text message read:

15 Comdata Maintenance Alert: Alerta de Comdata
16 Mantenimiento 09/16/18 from 12am-12pmCST ATM,
17 Cash & Pin based transactions will be unavailable during
18 this time.

19 10. Plaintiff received two more identical text messages, one on or about
20 August 17, 2018, at approximately 8:16 a.m. and on or about September 9, 2018, at
21 approximately 12:06 p.m.

22 11. Annoyed by the repeated, frequent text messages, Plaintiff replied to
23 the September 9, 2018, text message with “STOP”.

24 12. Defendant immediately responded to that “STOP” text message as
25 follows:

26 Comdata Alert: You have opted out and will no longer
27 received [sic] messages. Reply HELP to contract
28 Customer Service @ 888.265.8228.

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1
2 13. Despite having confirmed the request for text messages to cease, less
3 than a week later Plaintiff received another text message from the 303-52 short
4 code used or owned by Defendant. Specifically, on or around September 15, 2018,
5 at approximately 7:49 a.m. Plaintiff received a text message identical to the
6 September 9, 2018, text message.

7 14. Now extremely annoyed and frustrated, Plaintiff again responded to
8 the text message with the word “STOP”, to which Defendant provided an identical
9 text message stating that Plaintiff had opted out of receiving text messages and
10 would no longer receive messages.

11 15. However, these unwanted text message did not stop, as Plaintiff
12 received several more identical text messages, including on or about September 21,
13 2018, at approximately 5:21 p.m.; on or about October 17, 2018, at approximately
14 10:23 a.m.; and on or about October 19, 2018, at approximately 6:06 p.m.

15 16. In response to each and every text message since September 9, 2018,
16 Plaintiff has requested that the text messages cease by responding with “STOP”.
17 Despite Comdata’s acknowledgment of this request, Comdata continues to send
18 unwanted Plaintiff text messages to Plaintiff’s cell phone.

19 17. Upon information and belief, Comdata sent or transmitted, or had sent
20 or transmitted on its behalf, the same or substantially similar unsolicited text
21 messages *en masse* to thousands of customers’ cellular telephones nationwide.

22 18. Upon information and belief, Comdata constructed the content of
23 these text messages, and decided the timing of the sending of the message
24 campaign.

25 19. Comdata sent each of the aforementioned text messages to Plaintiff’s
26 cellular telephone using short message script (“SMS”) messaging technology,
27 specifically SMS “303-52”.
28

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1 20. Upon information and belief, this SMS short code is registered as
2 belonging to Comdata.

3 21. Also, the telephone number “888.265.8228” is listed on Comdata’s
4 website as being its Customer Service contact number.

5 22. The text messages sent to Plaintiff was impersonal.

6 23. Upon information and belief, the text messages were based on a
7 template.

8 24. Upon information and belief, the automated text messaging system
9 used by Comdata to send the text messages has the capacity to store or produce
10 telephone numbers to be called, using a random or sequential number generator.

11 25. Upon information and belief, the automated text messaging system
12 used by Comdata to send the text messages also has the capacity to, and does, dial
13 telephone numbers stored as a list or in a database without human intervention.

14 26. Defendant’s telephonic communications were not made for
15 emergency purposes, as defined by 47 U.S.C. § 227(b)(1)(A)(iii).

16 27. Defendant’s telephonic communications were made to a telephone
17 number assigned to a cellular telephone service for which Plaintiff incurs a charge,
18 as prohibited by 47 U.S.C. § 227(b)(1).

19 28. Defendant did not have prior express consent to send the text
20 messages to Plaintiff’s cell phone, especially after Plaintiff had clearly and
21 expressly requested on multiple occasions that Comdata cease sending text
22 messages.

23 29. Through Defendant’s aforementioned conduct, Plaintiff suffered an
24 invasion of a legally protected interest in privacy, which is specifically addressed
25 and protected by the TCPA.

26 30. Plaintiff was personally affected by Defendant’s aforementioned
27 conduct because Plaintiff was frustrated and distressed that Defendant annoyed
28 Plaintiff with text message using an ATDS without his prior express consent to

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1 receive such text messages, and even after telling Defendant to stop sending text
2 messages repeatedly. This invaded Plaintiff’s right to privacy.

3 31. Defendant’s telephonic communication forced Plaintiff and other
4 similarly situated class members to live without the utility of their cellular phones
5 because they were occupied text messages, causing annoyance and lost time.

6 32. Plaintiff is informed and believes and here upon alleges, that the text
7 messages were sent by Comdata and/or Comdata’s agent(s), with Comdata’s
8 permission, knowledge and/or control.

9 33. The text messages from Comdata, or its agent(s), violated 47 U.S.C. §
10 227(b)(1)(A)(iii).

11 **CLASS ACTION ALLEGATIONS**

12 34. Plaintiff brings this action on behalf of himself and on behalf of all
13 others similarly situated.

14 35. Plaintiff represents, and is a member of the class (the “Class”),
15 consisting of:

16 All persons within the United States who were sent any
17 text message by Defendant or its agent/s and/or
18 employee/s using short code 303-52 to said person’s
19 cellular telephone made through the use of any automatic
20 telephone dialing system, within the four years prior to
the filing of this Complaint.

21 36. Plaintiff also represents, and is a member of the subclass (the
22 “Subclass”), consisting of:

23 All persons within the United States who were sent any
24 text message by Defendant or its agent/s and/or
25 employee/s using short code 303-52 to said person’s
26 cellular telephone made through the use of any automatic
27 telephone dialing system, following a written request to
28 cease contacting their cellular telephone phone (e.g.,

1 through a “STOP” text message), within the four years
2 prior to the filing of this Complaint.

3 37. Defendant and its employees or agents are excluded from the Class
4 and Subclass. Plaintiff does not know the number of members in the Class or
5 Subclass, but believes the members of the Class and Subclass number in the
6 several thousands, if not more. Thus, this matter should be certified as a Class
7 action to assist in the expeditious litigation of this matter.

8 38. Plaintiff and members of the Class and Subclass were harmed by the
9 acts of Defendant in at least the following ways: Defendant, either directly or
10 through its agent(s), illegally contacted Plaintiff and the members of the Class and
11 Subclass via their cellular telephones by using an ATDS, thereby causing Plaintiff
12 and the Class and Subclass members to incur certain cellular telephone charges or
13 reduce cellular telephone time for which Plaintiff and the members of the Class
14 and Subclass previously paid, and invading the privacy of said Plaintiff and the
15 members of the Class and Subclass. Plaintiff and the members of the Class and
16 Subclass were damaged thereby.

17 39. This suit seeks only damages and injunctive relief for recovery of
18 economic injury on behalf of the Class and Subclass, and it expressly is not
19 intended to request any recovery for personal injury and claims related thereto.
20 Plaintiff reserves the right to expand the Class and Subclass definitions to seek
21 recovery on behalf of additional persons as warranted as facts are learned in further
22 investigation and discovery.

23 40. The joinder of the members of the Class and Subclass is impractical
24 and the disposition of their claims in the Class action will provide substantial
25 benefits both to the parties and to the court. The Class and Subclass can be
26 identified through records of Defendant and/or its agents and records of wireless
27 telephone carriers.
28

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1 41. There is a well-defined community of interest in the questions of law
2 and fact involved affecting the parties to be represented. The questions of law and
3 fact common to the Class and Subclass predominate over questions which may
4 affect individual members of the Class and Subclass, including the following:

- 5 (a) Whether, within the four years prior to the filing of this
6 Complaint, Defendant or its agent(s) sent any text messages
7 without the prior express written express consent of the called
8 party to members of the Class and Subclass using an automatic
9 dialing system;
- 10 (b) Whether Defendant sent text messages to members of the
11 Subclass after Defendant was instructed to stop sending text
12 messages;
- 13 (c) Whether Defendant can meet its burden of showing Defendant
14 obtained prior express consent;
- 15 (d) Whether Defendant’s conduct was knowing and/or willful;
- 16 (e) Whether Plaintiff and the members of the Class and Subclass
17 were damaged thereby, and the extent of damages for such
18 violation; and
- 19 (f) Whether Defendant and its agent(s) should be enjoined from
20 engaging in such conduct in the future.

21 42. As a person who received at least one text message from Comdata
22 using an ATDS without Plaintiff’s prior express consent, including after multiple
23 requests for the text messages to cease, Plaintiff is asserting claims that are typical
24 of the Class and the Subclass.

25 43. Plaintiff will fairly and adequately represent and protect the interests
26 of the Class and Subclass in that Plaintiff has no interest antagonistic to any
27 member of the Class or Subclass.

28

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1 44. Plaintiff and the members of the Class and Subclass have all suffered
2 irreparable harm as a result of Defendant’s unlawful and wrongful conduct.
3 Absent a class action, the Class and Subclass will continue to face the potential for
4 irreparable harm. In addition, these violations of law will be allowed to proceed
5 without remedy and Defendant will likely continue such illegal conduct. Because
6 of the size of each individual Class member’s claims, few, if any, members of the
7 Class and Subclass could afford to seek legal redress for the wrongs complained of
8 herein.

9 45. Plaintiff has retained counsel experienced in handling class action
10 claims and claims involving violations of the Telephone Consumer Protection Act.

11 46. A class action is a superior method for the fair and efficient
12 adjudication of this controversy. Class-wide damages are essential to induce
13 Defendant to comply with federal law. The interest of members of the Class and
14 Subclass in individually controlling the prosecution of separate claims against
15 Defendant is small because the maximum statutory damages in an individual action
16 for violation of privacy are minimal. Management of these claims is likely to
17 present significantly fewer difficulties than those presented in many class claims.

18 47. Notice may be provided to the Class and Subclass members by direct
19 mail and/or email notice, publication notice and by other reasonable means.

20 48. Defendant has acted on grounds generally applicable to the Class and
21 Subclass, thereby making appropriate final injunctive relief and corresponding
22 declaratory relief with respect to the Class and Subclass as a whole.

23 **FIRST CAUSE OF ACTION**
24 **NEGLIGENT VIOLATIONS OF THE TCPA**
25 **47 U.S.C. § 227 ET SEQ.**

26 49. Plaintiff incorporates by reference all of the above paragraphs of this
27 Complaint as though fully stated herein.

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1 50. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple negligent violations of the TCPA, including but not limited to each
3 and every one of the above-cited provisions of 47 U.S.C. § 227, *et seq.*

4 51. As a result of Defendant’s negligent violations of 47 U.S.C. § 227, *et*
5 *seq.*, Plaintiff and the Class and Subclass are entitled to an award of \$500.00 in
6 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
7 227(b)(3)(B).

8 52. Plaintiff and the Class and Subclass are also entitled to and seek
9 injunctive relief prohibiting such conduct in the future.

10 **SECOND CAUSE OF ACTION**

11 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TCPA**

12 **47 U.S.C. § 227 ET SEQ.**

13 53. Plaintiff incorporates by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 54. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple knowing and/or willful violations of the TCPA, including but not
17 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227, *et*
18 *seq.*

19 55. As a result of Defendant’s knowing and/or willful violations of 47
20 U.S.C. § 227, *et seq.*, Plaintiff and the Class and Subclass are entitled to an award
21 of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47
22 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

23 56. Plaintiff and the Class and Subclass are also entitled to and seek
24 injunctive relief prohibiting such conduct in the future.

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff and the Class and Subclass members pray for
27 judgment against Defendant and the following relief:

- 28
 - An order certifying the Class and Subclass as requested herein;

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- 1 • An order appointing Plaintiff to serve as the representative of the Class
- 2 and Subclass in this matter and appointing Plaintiff’s Counsel as Class and
- 3 Subclass Counsel in this matter;
- 4 • An award of \$500.00 in statutory damages to Plaintiff and each Class
- 5 and Subclass member for each and every negligent violation of 47 U.S.C. §
- 6 227(b)(1) by Defendant, pursuant to 47 U.S.C. § 227(b)(3)(B);
- 7 • An award of \$1,500.00 in statutory damages to Plaintiff and each
- 8 Class and Subclass member for each and every knowing and/or willful violation of
- 9 47 U.S.C. § 227(b)(1) by Defendant, pursuant to 47 U.S.C. § 227(b)(3)(B);
- 10 • Pre-judgment and post-judgment interest;
- 11 • An order providing injunctive relief prohibiting such conduct in the
- 12 future, pursuant to 47 U.S.C. § 227(b)(3)(A);
- 13 • An award of reasonable costs of suit;
- 14 • An award of reasonable attorneys’ fees;
- 15 • Any other relief the Court may deem just and proper.

TRIAL BY JURY

17 57. Pursuant to the eleventh amendment to the Constitution of the United
18 States of America, Plaintiff is entitled to, and demands, a trial by jury.

19 Dated: November 5, 2018

20 Respectfully submitted,

21 **KAZEROUNI LAW GROUP, APC**

22 By: s/ ABBAS KAZEROUNIAN
23 ABBAS KAZEROUNIAN
24 ATTORNEY FOR PLAINTIFF
25
26
27
28

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

DANIEL KOZIEJA, Individually and On Behalf of All Others Similarly Situated

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Kazerouni Law Group 245 Fischer Avenue, Suite D1 Costa Mesa, California 92626; Telephone: (800) 400-6808

DEFENDANTS

COMDATA, INC.

County of Residence of First Listed Defendant Williamson County, TN (IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

'18CV2533 LAB NLS

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, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, 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: Plaintiff received text messages from automatic telephone dialing system despite there being no prior consent.

VII. REQUESTED IN COMPLAINT:

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

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 11/05/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Abbas Kazerounian

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Comdata Sued Over Allegedly Unauthorized Text Messages](#)
