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12 *Counsel for Plaintiff and the Putative Class*

13 UNITED STATES DISTRICT COURT
14 SOUTHERN DISTRICT OF CALIFORNIA

15 KATIE RENVALL, individually and on
16 behalf of all others similarly situated,
17 Plaintiff,
18 vs.
19 ALBERTSONS COMPANIES LLC,
20 Defendant.

Case No. '18CV0809 H NLS
CLASS ACTION COMPLAINT
DEMAND FOR JURY TRIAL

21
22 Plaintiff Katie Renvall, individually and on behalf of all others similarly
23 situated, complains and alleges as follows based on personal knowledge as to
24 herself, on the investigation of her counsel, and on information and belief as to
25 all other matters. Plaintiff believes that substantial evidentiary support will
26 exist for the allegations set forth in this complaint, after a reasonable
27 opportunity for discovery.
28

1 **NATURE OF ACTION**

2 1. Plaintiff brings this action for legal and equitable remedies resulting
3 from the illegal actions of Albertsons Companies LLC in negligently, knowingly,
4 or willfully transmitting unsolicited, autodialed SMS or MMS text messages, *en*
5 *masse*, to Plaintiff's cellular device and the cellular devices of numerous other
6 individuals across the country, in violation of the Telephone Consumer
7 Protection Act, 47 U.S.C. § 227 ("TCPA").

8 **JURISDICTION AND VENUE**

9 2. This Court has subject-matter jurisdiction over this putative class
10 action lawsuit pursuant to 28 U.S.C. § 1331 and 47 U.S.C. § 227.

11 3. Personal jurisdiction and venue are proper in this district because
12 Plaintiff's claims arose in substantial part in this district and because Plaintiff
13 resides in this district. Defendant directed an unsolicited text message to
14 Plaintiff's cellular device in this district by transmitting the message to a cellular
15 telephone number that bears an area code (619) corresponding to a location in
16 this district. The text message sent by Defendant was received by Plaintiff on
17 her cellular device in this district. Defendant also operates and maintains
18 numerous brick-and-mortar grocery stores in this district.

19 **PARTIES**

20 4. Plaintiff is, and at all times mentioned herein was, an individual and
21 a "person" as defined by 47 U.S.C. § 153(39) and a citizen and resident of San
22 Diego, California.

23 5. Defendant Albertsons Companies LLC is, and at all times mentioned
24 herein was, a "person" as defined by 47 U.S.C. § 153(39). Defendant is the
25 second-largest supermarket chain in North America and does business
26 throughout the United States, including in this district. Defendant maintains its
27 corporate headquarters in Boise, Idaho.

1 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**

2 6. To address consumer complaints regarding certain telemarketing
3 practices, Congress enacted the TCPA, 47 U.S.C. § 227, in 1991. The TCPA
4 prohibits, *inter alia*, the use of automated telephone equipment, or “autodialers,”
5 to make any call, including sending a text message, to a wireless number absent
6 an emergency or the “prior express consent” of the party called. And in the case
7 of calls or text messages that constitute “advertisements” or “telemarketing”, as
8 defined by applicable regulations, the TCPA requires the “prior express written
9 consent” of the called party before initiating such calls or texts via an autodialer.

10 7. According to findings by the Federal Communication Commission
11 (“FCC”), which is vested with authority to issue regulations implementing the
12 TCPA, autodialed calls and texts are prohibited because receiving them is a
13 greater nuisance and invasion of privacy than live solicitation calls and they can
14 be costly and inconvenient. The FCC also recognized that wireless customers are
15 charged for such incoming calls and texts whether they pay in advance or after
16 the minutes or texts are used.

17 8. One of the most prevalent bulk advertising methods employed by
18 companies today involves the use of “Short Message Services” (or “SMS”), which
19 is a system that allows for the transmission and receipt of short text messages to
20 and from wireless telephones. Another similar service called “Multimedia
21 Messaging Services” (or “MMS”) is based upon and similar to the SMS system,
22 but also permits the transmission of photos and videos via text message.
23 According to a recent study, “[s]pam isn’t just for email anymore; it comes in the
24 form of unwanted text messages of all kinds — from coupons to phishing
25 schemes — sent directly to user’s cell phones.”¹

26 ¹ Amanda Lenhart, Cell Phones and American Adults: They Make Just as
27 Many Calls, but Text Less than Teens, Pew Research Center (2010),
28 <http://www.pewinternet.org/Reports/2010/Cell-Phones-and-American-Adults.aspx> (last visited May 21, 2015).

1 9. SMS and MMS text messages are directed to a wireless device
2 through a telephone number assigned to the device. When an SMS or MMS text
3 message is successfully transmitted, the recipient's wireless phone alerts the
4 recipient that a message has been received. Because wireless telephones are
5 carried on their owners' persons, SMS and MMS text messages are received
6 virtually anywhere in the world.

7 10. Unlike more conventional advertisements, SMS and MMS message
8 advertisements can actually cost their recipients money because wireless phone
9 users must pay their wireless service providers either for each text message
10 they receive or incur a usage allocation deduction to their text messaging or data
11 plan, regardless of whether the message is authorized.

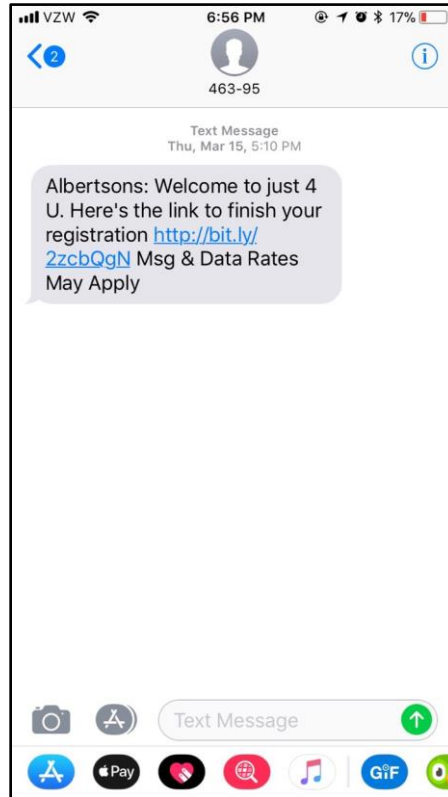
12 11. Moreover, the transmission of an unsolicited SMS or MMS text
13 message to a cellular device is distracting and aggravating to the recipient;
14 intrudes upon the recipient's seclusion; wastes a quantifiable amount of
15 available data on the recipient's cellular device, thereby reducing its data storage
16 capacity; temporarily reduces the available computing power and application
17 processing speed on the recipient's device; diminishes the available battery
18 power, and thus shortens the battery life, of the recipient's cellular device; and
19 requires expending a quantifiable amount of energy (*i.e.*, electricity) to recoup
20 the battery power lost as a result of receiving such a message.

21 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

22 12. Plaintiff is, and at all times mentioned herein was, the subscriber of
23 the cellular telephone number (619) ***-5024 (the "5024 Number"). The 5024
24 Number is, and at all times mentioned herein was, assigned to a cellular
25 telephone service as specified in 47 U.S.C. § 227(b)(1)(A)(iii).

26 13. On or about March 15, 2018, Defendant transmitted or caused to be
27 transmitted, by itself or through an intermediary or intermediaries, an SMS or
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1 MMS text message advertisement to the 5024 Number without Plaintiff's
2 express consent, written or otherwise. The text message transmitted by
3 Defendant to the 5024 Number is depicted below:
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17 14. The hyperlink contained within the above-depicted text message,
18 <http://bit.ly/2zcbQgN>, is leased or owned, and is operated and maintained, by
19 Defendant.
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21 15. When visited, the URL <http://bit.ly/2zcbQgN> re-directs to another
22 website, [https://www.safeway.com/CMS/account/register/?bannerId=alberts
23 ons&cmpid=sms_reg_alb_POS_wk04](https://www.safeway.com/CMS/account/register/?bannerId=albertsons&cmpid=sms_reg_alb_POS_wk04), also owned and operated by Defendant, at
24 which Defendant requests that the visitor register for Defendant's "Just for U"
25 and "Gas Rewards" services by submitting various personal information, in
26 order for the Defendant to more effectively market its goods and services.
27 Specifically, this registration website informs visitors that, by completing the
28 registration form, "[y]ou're one step away from unlocking great savings!" -

1 including “personalized deals,” “digital coupons,” “free products,” “gas reward
2 points,” and “discounts automatically at checkout.”²

3 16. Defendant’s registration website further states that, *inter alia*, “**If you**
4 **opted into 46395 you can opt out at any time.** Text HELP to 46395 for help. Text
5 STOP to 46395 to cancel. Message and data rates may apply. Maximum of 4
6 messages per month. *See* Terms of Use and Privacy Policy.”³ Thus, Defendant
7 appears to acknowledge on its own registration website that individuals will
8 receive text messages directing them there without ever having opted in to
9 receive Defendant’s invasive, automated text messages in the first place, as
10 happened to Plaintiff here.

11 17. The “Privacy Policy” hyperlink on Defendant’s registration website
12 links the visitor to another website which states, *inter alia*, that “you may opt out
13 of receiving [text messages] by using the method provided in the ... text
14 message[.]”⁴ However, the March 15, 2018 text message sent by Defendant to
15 the 5024 Number contained no method for Plaintiff to instruct Defendant to stop
16 sending her text messages.

17 18. The source of the unsolicited text message advertisement that
18 Defendant sent to the 5024 Number was “46395”, which is a short code leased
19 by Defendant or Defendant’s agent(s) or affiliate(s) and is used for operating
20 Defendant’s text message marketing program.

21 19. Because Plaintiff is alerted by her cellular device, by auditory or
22 visual means, whenever she receives a text message, the unsolicited SMS or MMS
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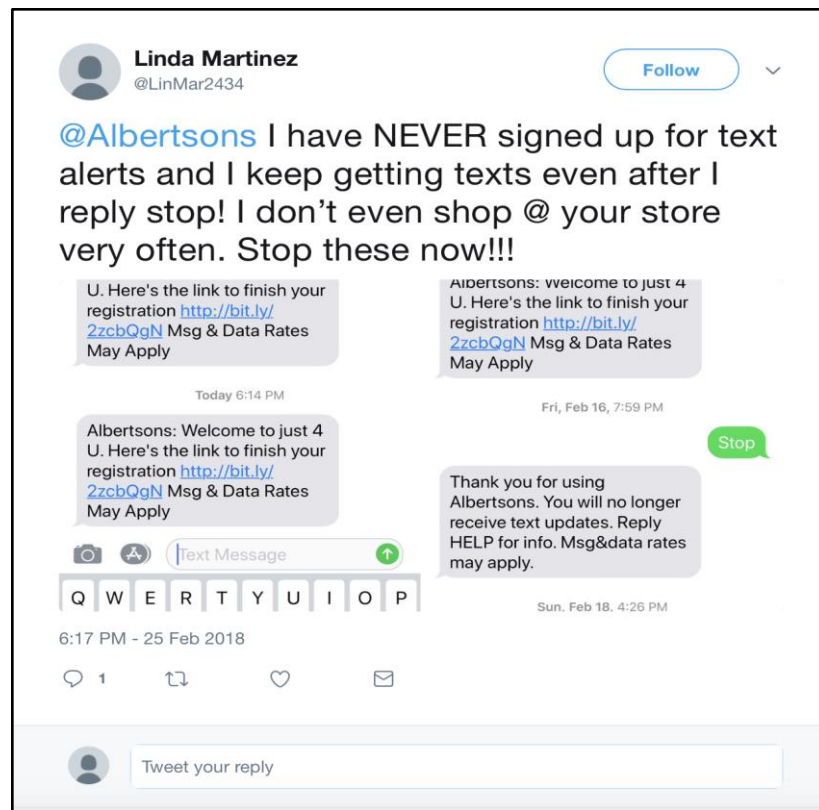
24 ² “Registration,” Albertsons Companies LLC, *available at* https://www.safeway.com/CMS/account/register/?bannerId=albertsons&cmpid=sms_reg_alb_POS_wk04 (last accessed April 24, 2018).

26 ³ *Id.* (emphasis added).

27 ⁴ “Privacy Policy,” Albertsons Companies LLC, *available at* <https://www.albertsons.com/privacy-policy/> (last accessed April 24, 2018).

1 text message that Defendant transmitted to Plaintiff's cellular device invaded
2 Plaintiff's privacy and intruded upon Plaintiff's seclusion upon receipt. Plaintiff
3 became distracted and aggravated as a result of receiving Defendant's
4 unsolicited text message advertisement.

5 20. Numerous other consumers have voiced grievances to Defendant on
6 social media after having received the same exact message Plaintiff received
7 from Defendant, during roughly the same period of time. For example:
8



22 21. All telephone contact by Defendant or affiliates, subsidiaries, or
23 agents of Defendant to Plaintiff at the 5024 Number occurred via an "automated
24 telephone dialing system" as defined by 47 U.S.C. § 227(b)(1)(A).

25 22. Specifically, Defendant utilized an "automated telephone dialing
26 system" because the text messages to the 5024 Number were sent from "46395",
27 which is a short code telephone number used to message consumers *en masse*;
28 because Defendant's automated dialing equipment includes features

1 substantially similar to a predictive dialer, inasmuch as it is capable of making
2 numerous calls or texts simultaneously (all without human intervention); and
3 because the hardware and software used by Defendant to send such messages
4 have the capacity to store, produce, and dial random or sequential numbers, or
5 receive and store lists of telephone numbers, and to dial such numbers, *en*
6 *masse*, in an automated fashion and without human intervention.

7 23. And indeed, Defendant actually transmitted the text messages at
8 issue in this case to Plaintiff and all other putative class members in an
9 automated fashion and without human intervention, with hardware and
10 software that stores, produces and dials random or sequential numbers. In fact,
11 on Defendant's "Privacy Policy" website, which contains an "updated" date of
12 April 13, 2018, Defendant admits that, *inter alia*, its text messages "may be sent
13 by automated means."⁵

14 24. The complained of text message sent by Defendant to the 5024
15 Number on March 15, 2018 constituted an "advertisement" and/or
16 "telemarketing" material within the meaning of the applicable TCPA regulations.
17 This is because Defendant sent the text message in order to advertise the
18 commercial availability of its "Just for U" service and "Gas Rewards" service, as
19 well as its mobile messaging service itself, and also because Defendant sent the
20 text message for the purpose of advertising the sale of its grocery and gas goods
21 to Plaintiff in the future.

22 25. Plaintiff never provided her "prior express written consent" or any
23 other form of consent to Defendant or any affiliate, subsidiary, or agent of
24 Defendant to transmit SMS or MMS text messages to the 5024 Number by means
25 of an "automatic telephone dialing system," within the meaning of 47 U.S.C.
26 § 227(b)(1)(A).

27 _____
28 ⁵ "Privacy Policy," Albertsons Companies LLC, *available at* <https://www.albertsons.com/privacy-policy/> (last accessed April 24, 2018).

CLASS ALLEGATIONS

1
2 26. Class Definition. Plaintiff brings this civil class action on behalf of
3 herself individually and on behalf of all other similarly situated persons as a
4 class action pursuant to Federal Rule of Civil Procedure 23. The “Class” which
5 Plaintiff seeks to represent is comprised of and defined as follows:

6 All persons within the United States who, between
7 April 27, 2014 and the present, received one or more
8 SMS or MMS text message(s) from Albertsons
9 Companies LLC or an affiliate, subsidiary, or agent of
10 Albertsons Companies LLC and who did not provide
11 Albertsons Companies LLC prior express written
12 consent to receive such SMS or MMS text message(s).

13 27. Defendant, its employees, and agents are excluded from the Class.

14 28. Plaintiff reserves the right to modify the definition of the Class (or
15 add one or more subclasses) after further discovery.

16 29. Plaintiff and all Class members have been impacted and harmed by
17 the acts of Defendant or its affiliates or subsidiaries.

18 30. This Class Action Complaint seeks injunctive relief and monetary
19 damages.

20 31. This action may properly be brought and maintained as a class
21 action pursuant to Federal Rule of Civil Procedure 23(a) and (b). This class
22 action satisfies the numerosity, typicality, adequacy, commonality,
23 predominance, and superiority requirements.

24 32. Upon application by Plaintiff’s counsel for certification of the Class,
25 the Court may also be requested to utilize and certify subclasses in the interests
26 of manageability, justice, or judicial economy.

27 33. Numerosity. The number of persons within the Class is substantial,
28 believed to amount to tens of thousands of persons dispersed throughout the
United States. It is, therefore, impractical to join each member of the Class as a
named Plaintiff. Further, the size and relatively modest value of the claims of the

1 individual members of the Class renders joinder impractical. Accordingly,
2 utilization of the class action mechanism is the most economically feasible
3 means of determining and adjudicating the merits of this litigation.

4 34. Typicality. Plaintiff received at least one text message through the
5 use of an automatic telephone dialing system, without providing prior express
6 written consent to the Defendant within the meaning of the TCPA. Consequently,
7 the claims of Plaintiff are typical of the claims of the members of the Class, and
8 Plaintiff's interests are consistent with and not antagonistic to those of the other
9 Class members she seeks to represent. Plaintiff and all members of the Class
10 have been impacted by, and face continuing harm arising out of, Defendant's
11 violations or misconduct as alleged herein.

12 35. Adequacy. As Class representative, Plaintiff has no interests adverse
13 to, or which conflict with, the interests of the absent members of the Class, and is
14 able to fairly and adequately represent and protect the interests of such a Class.
15 Plaintiff has raised viable statutory claims of the type reasonably expected to be
16 raised by members of the Class and will vigorously pursue those claims. If
17 necessary, Plaintiff may seek leave to amend this Class Action Complaint to add
18 additional Class representatives or assert additional claims.

19 36. Competency of Class Counsel. Plaintiff has retained and is
20 represented by experienced, qualified, and competent counsel committed to
21 prosecuting this action. Counsel are experienced in handling complex class
22 action claims, in particular claims under the TCPA and other data privacy and
23 consumer protection statutes.

24 37. Commonality and Predominance. There are well-defined common
25 questions of fact and law that exist as to all members of the Class and
26 predominate over any questions affecting only individual members of the Class.
27 These common legal and factual questions, which do not vary from Class
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1 member to Class member and may be determined without reference to the
2 individual circumstances of any class member, include (but are not limited to)
3 the following:

- 4 a) Whether Defendant or affiliates, subsidiaries, or agents
5 of Defendant transmitted advertising or telemarketing
6 text messages to Plaintiff's and Class members' cellular
7 telephones;
8 b) Whether such text messages were sent using an
9 "automatic telephone dialing system";
10 c) Whether Defendant or affiliates, subsidiaries, or agents
11 of Defendant can meet their burden to show Defendant
12 obtained prior express written consent (as defined by 47
13 C.F.R. 64.1200(f)(8)) to send the text messages
14 complained of, assuming such an affirmative defense is
15 raised;
16 d) Whether the complained of conduct was knowing or
17 willful;
18 e) Whether Defendant or affiliates, subsidiaries, or agents
19 of Defendant should be enjoined from engaging in such
20 conduct in the future.

21 38. Superiority. A class action is superior to other available methods for
22 the fair and efficient adjudication of this controversy because individual
23 litigation of the claims of all Class members is impracticable. Even if every
24 member of the Class could afford to pursue individual litigation, the Court
25 system could not. It would be unduly burdensome to the courts in which
26 individual litigation of numerous cases would proceed. Individualized litigation
27 would also present the potential for varying, inconsistent or contradictory
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1 judgments, and would magnify the delay and expense to all parties and to the
2 court system resulting from multiple trials of the same factual issues. By
3 contrast, the maintenance of this action as a class action, with respect to some or
4 all of the issues presented herein, presents few management difficulties,
5 conserves the resources of the parties and of the court system and protects the
6 rights of each member of the Class. Plaintiff anticipates no difficulty in the
7 management of this action as a class action. Class wide relief is essential to
8 compel compliance with the TCPA. The interest of Class members in individually
9 controlling the prosecution of separate claims is small because the statutory
10 damages in an individual action for violation of the TCPA are small. Management
11 of these claims is likely to present significantly fewer difficulties than are
12 presented in many class claims because the text messages at issue are all
13 automated and the Class members, by definition, did not provide the prior
14 express written consent required under the statute to authorize such text
15 messages to their cellular telephones. The Class members can be readily located
16 and notified of this class action through Defendant's records and, if necessary,
17 the records of cellular telephone providers.

18 39. Additionally, the prosecution of separate actions by individual Class
19 members may create a risk of multiple adjudications with respect to them that
20 would, as a practical matter, be dispositive of the interests of other members of
21 the Class who are not parties to such adjudications, thereby substantially
22 impairing or impeding the ability of such nonparty Class members to protect
23 their interests. The prosecution of individual actions by Class members could
24 further establish inconsistent results and/or establish incompatible standards of
25 conduct for Defendant.

26 40. Defendant or any affiliates, subsidiaries, or agents of Defendant have
27 acted on grounds generally applicable to the Class, thereby making final
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1 injunctive relief and corresponding declaratory relief with respect to the Class as
2 a whole appropriate. Moreover, on information and belief, Plaintiff alleges that
3 the TCPA violations complained of herein are substantially likely to continue in
4 the future if an injunction is not entered.

5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**
7 **NEGLIGENT VIOLATION OF THE TELEPHONE**
8 **CONSUMER PROTECTION ACT**
9 **(47 U.S.C. § 227)**

10 41. Plaintiff incorporates by reference paragraphs 1-40 of this Class
11 Action Complaint as if fully stated herein.

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

15 43. As a result of Defendant's negligent violations of 47 U.S.C. § 227,
16 Plaintiff and all Class members are entitled to, and do seek, injunctive relief
17 prohibiting such conduct violating the TCPA in the future.

18 44. As a result of Defendant's negligent violations of 47 U.S.C. § 227,
19 Plaintiff and all Class members are also entitled to, and do seek, an award of
20 \$500.00 in statutory damages for each and every text message transmitted in
21 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3).

22 45. Plaintiff and Class members also seek an award of attorneys' fees
23 and costs.

24 **SECOND CLAIM FOR RELIEF**
25 **KNOWING AND/OR WILLFUL VIOLATION OF THE**
26 **TELEPHONE CONSUMER PROTECTION ACT**
27 **(47 U.S.C. § 227)**

28 46. Plaintiff incorporates by reference paragraphs 1-40 of this Class
Action Complaint as if fully stated herein.

1 47. The foregoing acts and omissions by Defendant constitute knowing
2 or willful violations of the TCPA, including but not limited to violations of each of
3 the above-cited provisions of 47 U.S.C. § 227.

4 48. As a result of alleged knowing or willful violations of 47 U.S.C. § 227,
5 Plaintiff and all Class members are entitled to, and do seek, injunctive relief
6 prohibiting such conduct violating the TCPA in the future.

7 49. As a result of Defendant's knowing or willful violations of 47 U.S.C.
8 § 227, Plaintiff and all Class members are also entitled to, and do seek, treble
9 damages of up to \$1,500.00 for each and every text message transmitted in
10 violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3).

11 50. Plaintiff and Class members also seek an award of attorneys' fees
12 and costs.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff prays for relief and judgment in her favor, as
15 follows:

16 1. Injunctive relief prohibiting such violations of the TCPA in the
17 future;

18 2. As a result of the alleged negligent violations of 47 U.S.C.
19 § 227(b)(1), Plaintiff seeks for herself and each class member \$500.00 in
20 statutory damages for each and every text message that violated the TCPA;

21 3. As a result of the alleged willful or knowing violations of 47 U.S.C.
22 § 227(b)(1), Plaintiff seeks for herself and each class member treble damages, as
23 provided by the statute, of up to \$1,500.00 for each and every text message that
24 violated the TCPA;

25 4. An award of attorneys' fees and costs to counsel for Plaintiff and the
26 Class; and
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5. An Order certifying this action to be a proper class action pursuant to Federal Rule of Civil Procedure 23, establishing an appropriate Class and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the law firm representing Plaintiff as counsel for the Class.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself and the Class, hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all claims so triable.

Dated: April 27, 2018

Respectfully submitted,
BOTTINI & BOTTINI, INC.
Francis A. Bottini, Jr. (SBN 175783)
Albert Y. Chang (SBN 296065)
Yury A. Kolesnikov (SBN 271173)

By: s/ Francis A. Bottini, Jr.
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Counsel for Plaintiff and the Putative 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

KATIE RENVALL, individually and on behalf of all others similarly situated,

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Francis A. Bottini, Jr., Esq., BOTTINI & BOTTINI, INC. 7817 Ivanhoe Avenue, Suite 102, La Jolla, California 92037 (858) 914-2001

DEFENDANTS

ALBERTSONS COMPANIES LLC,

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

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

Attorneys (If Known)

'18CV0809 H 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 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, 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. Brief description of cause: Telephone Consumer Protection Act of 1991

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 04/27/2018 SIGNATURE OF ATTORNEY OF RECORD s/ Francis A. Bottini, Jr.

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: [Albertsons Companies Hit with TCPA Suit Over Unwanted Marketing Texts](#)