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 13 **UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF**
 14 **CALIFORNIA**

15
 16 KARLA Y. SOUSA, on behalf of
 17 herself and all others similarly
 18 situated,

19 Plaintiff,

20 v.

21 7- Eleven, Inc.,

22 Defendant.

Case No. '19CV2142 BEN RBB

CLASS ACTION

**CLASS ACTION COMPLAINT
 FOR DAMAGES AND
 INJUNCTIVE RELIEF PURSUANT
 TO 47 U.S.C. § 227 ET SEQ.
 (TELEPHONE CONSUMER
 PROTECTION ACT)**

DEMAND FOR JURY TRIAL

1 Plaintiff Karla Y. Sousa (hereinafter referred to as “Plaintiff”),
2 individually and on behalf of all others similarly situated, alleges on personal
3 knowledge, investigation of her counsel, and on information and belief as follows:

4 **NATURE OF ACTION**

5 1. Plaintiff brings this action for damages, and other legal and
6 equitable remedies, resulting from the illegal actions of 7-Eleven, Inc. (“7-Eleven”
7 or “Defendant”) in negligently, knowingly, and/or willfully contacting Plaintiff and
8 the Class Members via text messages on their cellular telephones without their prior
9 express consent within the meaning of the Telephone Consumer Protection Act, 47
10 U.S.C. § 227 *et seq.* (hereinafter referred to as the “TCPA”), and the Federal
11 Communication Commission rules promulgated thereunder, 47 C.F.R. § 64.1200
12 (“Rules”). Defendant engaged in an especially pernicious for of marketing: the
13 unauthorized transmission of text messages to persons throughout the nation
14 without their consent in an attempt to have those persons “opt in” to future text
15 message advertising.

16 2. By effectuating these unauthorized text messages or wireless
17 spam, Defendant has caused consumers actual harm, not only because consumers
18 were subjected to the aggravation that necessary accompanies such unwanted text
19 messages, but also because consumers frequently have to pay their cell phone
20 service providers for the receipt of such text messages.

21 3. In order to redress these injuries, Plaintiff, on behalf of herself
22 and a nationwide class of similarly situated individuals, brings this action for
23 injunctive relief and statutory damages under the TCPA resulting from Defendant’s
24 illegal actions. Plaintiff also seeks costs and reasonable attorneys’ fees.

25 **JURISDICTION AND VENUE**

26 4. This matter in controversy exceeds \$5,000,000, as each member
27 of the proposed Class of tens of thousands is entitled to up to \$1,500.00 in statutory
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1 provided by the consumer to the creditor, and that such number was provided
2 during the transaction that resulted in the debt owed.”⁵

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4 **FACTUAL ALLEGATIONS**

5 13. At all times relevant herein, Plaintiff was an individual residing
6 in the State of California, and within this judicial district. Plaintiff is, and at all
7 times mentioned herein was, a "person" as defined by 47 U.S.C. § 153(39).

8 14. On information and belief, the decisions complained of herein,
9 relating to the sending of text messages through the use of an “automatic telephone
10 dialing system” and/or using “an artificial or prerecorded voice” to call consumers’
11 cellular telephones without their prior express consent, and the procedures used in
12 obtaining the cellular phone numbers to be called, and to do so without “scrubbing”
13 them or otherwise determining the call recipients’ prior express consent, originated
14 from Defendant and were implemented by Defendant and their agents, all of
15 whom sent the text messages / calls to cellular phones complained of herein on
16 behalf of Defendant. A text message is considered a “call” under the TCPA. Any
17 and all decisions about the calling procedures originated with or were approved by
18 Defendant.

19 15. One way to advertise is through ShortMessage Services. The
20 term “Short Message Service” or “SMS” is a messaging system that allows cellular
21 telephone subscribers to use their cellular telephones to send and receive short text
22 messages, usually limited to 160 characters.

23 16. An “SMS message” is a text message call directed to a
24 wireless device through the use of the telephone number assigned to the device.
25 When an SMS message call is successfully made, the recipient’s cell phone rings or
26 otherwise acknowledges the receipt of the text message, alerting him or her that a
27 text is being received. As cellular telephones are inherently mobile and are

28 ⁵ *FCC Declaratory Ruling*, 23 F.C.C.R. at 564-65 (¶ 10).

1 frequently carried on their owner's person, calls to cellular telephones, including
2 SMS messages, may be received by the called party virtually anywhere worldwide.

3 17. Unlike more conventional advertisements, these text messages
4 actually cost their recipients money, because cell phone users must frequently pay
5 their wireless service providers either for each text message call they receive or
6 incur a usage allocation deduction to their text plan, regardless of whether or not the
7 message is authorized.

8 18. Over the course of an extended period beginning at a time
9 within four years prior to the filing of this Complaint, Defendant and their agents
10 directed the mass nationwide transmission of text messages to the cell phones of
11 what they hoped were potential customers of Defendant's convenience store
12 businesses.

13 19. For instance, on or about October 31, 2019, Plaintiff Sousa's
14 cell phone rang, indicating that a text call was being received.

15 20. The "from" field of such transmission was identified
16 cryptically as "711-711," which is an abbreviated telephone number known as an
17 SMS short code licensed and operated by Defendant and their agents. The body of
18 such text message read:

19 "Reply with your Zipcode to confirm opt-in for auto dialed
20 marketing txt msgs from 7-Eleven to this mobile #. Consent not
21 required to buy goods/service"

22 21. Defendant's use of an SMS short code enabled Defendant's
23 mass transmission of text messages to a list of cellular telephone numbers.

24 22. Defendant is, and at all times mentioned herein was, a
25 "person", as defined by 47 U.S.C. § 153(39).

26 23. All telephone contact in sending Plaintiff the unsolicited text
27 message by Defendant on her cellular telephone occurred via an "automatic
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1 telephone dialing system,” as defined by 47 U.S.C. § 227(a)(1), and/or used “an
2 artificial or prerecorded voice” as described in 47 U.S.C. § 227(b)(1)(A).

3 24. Plaintiff did not provide “express consent” allowing Defendant
4 to place a telephone call or to send a text message to Plaintiff’s cellular phone
5 utilizing an “artificial or prerecorded voice” or placed by an “automatic telephone
6 dialing system,” within the meaning of 47 U.S.C. § 227(b)(1)(A).

7 25. Defendant’s text message to Plaintiff’s cellular phone was not
8 “for emergency purposes” as described in 47 U.S.C. § 227(b)(1)(A).

9 26. Under the TCPA and pursuant to the FCC’s January 2008
10 Declaratory Ruling, the burden is on Defendant to demonstrate that Plaintiff
11 provided express consent within the meaning of the statute.⁶

12 27. Plaintiff and all members of the Class have been harmed by the
13 acts of Defendant in the form of multiple involuntary telephone and electrical
14 charges, the aggravation, nuisance, and invasion of privacy that necessarily
15 accompanies the receipt of unsolicited and harassing telephone calls, and violations
16 of their statutory rights. Plaintiff and putative Class Members suffered an invasion
17 of privacy, as well as particularized and concrete injuries, which are real, actually
18 exist, and are personal to the Plaintiff and to the class members, including the
19 inducement of stress, anxiety, nervousness, embarrassment, distress, and/or
20 aggravation. Plaintiff and putative Class Members also suffered out-of-pocket
21 losses, including the monies paid to their wireless carriers for the receipt of such
22 calls. Additionally, due to both the answered and unanswered calls placed by
23 Defendant, Plaintiff and putative Class Members suffered the expenditure of their
24 time, exhaustion of their cellular telephone batteries, unavailability of their cellular
25 telephones while Defendant’s texts / calls were incoming, and trespass upon their
26 respective chattels. All of the above-mentioned injuries were caused by, are

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28 ⁶ See *FCC Declaratory Ruling*, 23 F.C.C.R. at 565 (¶ 10).

1 traceable to Defendant’s conduct, and/or directly related to, Defendant’s placement
2 of text messages / calls to Plaintiff and putative Class Members by using an ATDS
3 to dial or call their cellular telephone numbers.

4 **CLASS ACTION ALLEGATIONS**

5 28. Plaintiff brings this action on behalf of herself and on behalf of
6 all other persons similarly situated (hereinafter referred to as “the Class”).

7 29. Plaintiff proposes the following Class definition, subject to
8 amendment as appropriate:

9 All persons within the United States who received a non-
10 emergency text message from 7-Eleven, or their agents, to
11 a cellular telephone through the use of an automatic
12 telephone dialing system within four years to the filing of
13 this Complaint.

14 Collectively, all these persons will be referred to as “Class members.” Plaintiff
15 represents, and is a member of, the Class. Excluded from the Class are the
16 Defendant, and any entities in which they have a controlling interest, their agents
17 and employees, any Judge to whom this action is assigned and any member of such
18 Judge’s staff and immediate family, and claims for personal injury, wrongful death
19 and/or emotional distress.

20 30. Plaintiff does not know the exact number of members in the
21 Class, but based upon the size of the company and its stated business practices in
22 making telephone calls, Plaintiff reasonably believes that Class members number at
23 a minimum in the thousands. Plaintiff will fairly and adequately represent and
24 protect the interests of the other members of the Class. Plaintiff and their counsel
25 are committed to vigorously prosecuting this action on behalf of the members of the
26 Class, and have the financial resources to do so. No Plaintiff, nor their counsel, has
27 any interest adverse to those of the other members of the Class or each other.
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31. This Class Action Complaint seeks injunctive relief and money damages.

32. The joinder of all Class members is impracticable due to the size and relatively modest value of each individual claim. The disposition of the claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits. The Class can be identified easily through records maintained by Defendant, and its agents. The class treatment of common questions of law and fact is also superior to multiple individual actions or piecemeal litigation in that it conserves the resources of the courts and the litigants, and promotes consistency and efficiency of adjudication.

33. The factual and legal bases of Defendant’s liability to Plaintiff and to the other members of the Class are the same, resulting in injury to Plaintiff and to all of the other members of the Class as a result of the transmission of the text messages at issue as alleged herein. Plaintiff and the other Class members have all suffered harm and damages as a result of Defendant’s unlawful and wrongful conduct as a result of the transmission of the unlawful text messages.

34. There are well defined, nearly identical, questions of law and fact affecting all parties. The questions of law and fact involving the class claims predominate over questions which may affect individual Class members. Those common questions of law and fact include, but are not limited to, the following:

a. Whether Defendant made non-emergency calls / text messages to Plaintiff’s and Class members’ cellular telephones using an automatic telephone dialing system;

b. Whether Defendant can meet their burden of showing they obtained prior express consent (*i.e.*, consent that is clearly and unmistakably stated), to make such calls;

1 c. Whether Defendant's conduct was knowing
2 and/or willful;

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4 d. Whether Defendant is liable for damages,
5 and the amount of such damages; and

6 e. Whether Defendant should be enjoined from
7 engaging in such conduct in the future.

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9 35. As a person who received one or more text messages to her
10 cellphone using an automatic telephone dialing system, without her prior express
11 consent within the meaning of the TCPA and Rules, Plaintiff asserts claims that
12 are typical of each Class member. Plaintiff will fairly and adequately represent
13 and protect the interests of the Class, and has no interests which are antagonistic to
14 any member of the Class.

15 36. Plaintiff has retained counsel experienced in handling class
16 action claims involving violations of federal and state consumer protection
17 statutes, including claims under the TCPA.

18 37. A class action is the superior method for the fair and efficient
19 adjudication of this controversy. Class wide relief is essential to compel
20 Defendant to comply with the TCPA. The interest of Class members in
21 individually controlling the prosecution of separate claims against Defendant is
22 small because the statutory damages in an individual action for violation of the
23 TCPA are small. Management of these claims is likely to present significantly
24 fewer difficulties than are presented in many class claims because the calls at issue
25 are all automated and the Class members, by definition, did not provide the prior
26 express consent required under the statute to authorize calls to their cellular
27 telephones.
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1 and any Subclasses the Court deems appropriate, finding that Plaintiff is a proper
2 representative of the Class, and appointing the lawyers and law firms representing
3 Plaintiff as counsel for the Class;

4 F. Such other relief as the Court deems just and proper.

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiff demands a trial by jury on all counts so triable.

8 Dated: November 6, 2019

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10 By: /s/ Douglas J. Campion
11 Douglas J. Campion

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Telemarketing Texts Sent by 7-Eleven Were Illegal Under the TCPA, Class Action Claims](#)
