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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Brenda Whittaker, individually and on
9 behalf of all others similarly situated,

10 Plaintiff,

11 v.

12 WinRed Technical Services, LLC, a
13 Delaware limited liability company, and
14 National Republican Senatorial
15 Committee, a District of Columbia non-
16 profit organization,

17 Defendants.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

18 Plaintiff Brenda Whittaker (“Plaintiff” or “Whittaker”) brings this Class Action
19 Complaint and Demand for Jury Trial (“Complaint”) against Defendants WinRed
20 Technical Services, LLC (“WinRed”) and National Republican Senatorial Committee
21 (“NRSC”) (collectively “Defendants”) to stop their practice of placing text message calls
22 using an ATDS to cellular telephones of consumers nationwide without their prior express
23 written consent, and to obtain redress for all persons injured by its conduct. Plaintiff, for
24 her Complaint, alleges as follows upon personal knowledge as to herself and her own acts
25 and experiences, and, as to all other matters, upon information and belief, including
26 investigation conducted by her attorneys.
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PARTIES

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2 1. Plaintiff Brenda Whittaker is a natural person and resident of Cottonwood,
3 Yavapai County, Arizona.

4 2. Defendant WinRed Technical Services, LLC is a limited liability company
5 organized and existing under the laws of the State of Delaware with its principal place of
6 business located at 1776 Wilson Boulevard, Suite 530, Arlington, Virginia 22209.
7 Defendant conducts business throughout this District, the State of Arizona, and the United
8 States.

9 3. Defendant National Republican Senatorial Committee is a non-profit
10 organization with its principal place of business located at 425 2nd Street Northeast,
11 Washington, D.C. 20002. Defendant conducts business throughout this District, the State
12 of Arizona, and the United States.

JURISDICTION AND VENUE

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14 4. This Court has jurisdiction over the subject matter of this action under 28
15 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute. The Court
16 also has jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d), *et seq.*
17 (“CAFA”) because there are over 100 class members, there is minimal diversity, and there
18 is over \$5,000,000 at issue when the claims of the Class are aggregated. And none of the
19 exceptions to CAFA applies.

20 5. This Court has personal jurisdiction over Defendants because Defendants
21 conduct a significant amount of business in this District, made and continue to make
22 unsolicited text message calls directed to this District, and because the wrongful conduct
23 giving rise to this case occurred in, was directed to, and/or emanated from this District.

24 6. Venue is proper in this District under 28 U.S.C. § 1391(b) because
25 Defendants conduct a significant amount of business within this District and because the
26 wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated
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1 from this District.

2 **COMMON FACTUAL ALLEGATIONS**

3 7. WinRed is a fundraising technology service that boasts of providing the
4 number one online fundraising platform for the Republican Party and conservative groups.
5 WinRed allows donors from across the country to easily connect with and support causes
6 and candidates that they support.

7 8. NRSC is a national organization devoted solely to strengthening the
8 Republican Senate majority and electing Republicans to the United States Senate. NRSC
9 provides support and assistance to Republican candidates in several areas regarding
10 planning, running, and strategizing for a campaign.

11 9. Unfortunately for consumers, WinRed and NRSC cast their marketing net
12 too wide. That is, in an attempt to generate campaign donations, Defendants conducted
13 (and continue to conduct) a wide scale telemarketing campaign that features unsolicited
14 autodialed text message calls to consumers' cellular telephones all without any prior
15 express written consent to make the texts at issue.

16 10. In making the autodialed text message calls at issue in this Complaint,
17 Defendants and/or their agents utilized an automatic telephone dialing system ("ATDS").
18 Specifically, the hardware and software used by Defendants and/or their agents has the
19 capacity to store, produce, and dial random or sequential numbers, and/or receive and
20 store lists of telephone numbers, and to dial such numbers, *en masse*, in an automated
21 fashion without human intervention. Defendants' automated dialing equipment includes
22 features substantially similar to a predictive dialer, inasmuch as it is capable of making
23 numerous texts simultaneously, without human intervention.

24 11. At all times material to this Complaint Defendants were and are fully aware
25 that unsolicited telemarketing text messages calls are being made to consumer's cellular
26 telephones through its own efforts and that of its agents.

1 12. Defendants knowingly made (and continues to make) unsolicited
2 telemarketing text message calls without the prior express written consent of the
3 recipients. In doing so, Defendants not only invaded the personal privacy of Plaintiff and
4 members of the putative Class, but also intentionally and repeated violated the TCPA.

5 **FACTS SPECIFIC TO PLAINTIFF**

6 13. Plaintiff Whittaker is the owner and customary user of the cellular telephone
7 number ending in 9679.

8 14. On or around April 21, 2020, Plaintiff received an unsolicited text message
9 call from Defendants from the telephone number (855) 906-0296. On information and
10 belief, this call was placed using an ATDS. The text message read, “It’s Newt. Ratings for
11 3 battleground states JUST shifted in favor of Schumer & Dems – if they flip 4, they take
12 control. Stop them! <https://nrsc.news/2xPscR0>”.

13 15. The impersonal and generic nature of the messages as well as the frequency
14 of the messages and the lack of consent are all indicative of the use of an ATDS.

15 16. Over the next several days, Defendants sent Plaintiff numerous unsolicited
16 text messages from the same number, (855) 906-0296. All of the text messages solicited
17 Plaintiff to contribute money to the Defendants. Plaintiff received the following text
18 messages:

- 19 • On April 24, 2020, “Karl Rove: Why haven’t you made 5X IMPACT to
20 defend the Senate Majority? If the GOP loses 4 seats, Schumer takes
21 control! Act NOW: <https://nrsc.news/2xWkuof>”;
- 22 • On April 26, 2020, “BREAKING: Liberal George Soros spent \$28
23 MILLION to defeat Mitch & Republicans. Make a 400% matched
24 contribution to SAVE Trump’s <https://nrsc.news/2xWkuof>”;
- 25 • On April 27, 2020, “It’s Donald Trump Jr. McConnell, Rove, Newt & I have
26 all texted you. Don’t ignore this message. Deadline is in 3 days. 5X Match
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1 NOW:Majority: http://bit.ly_4x28-”;

- 2 • On April 28, 2020, “Donald Trump Jr here. My dad’s ally Martha McSally,
3 needs our help keeping Arizona’s Senate seat RED! Chip in before 11:59PM
4 tonight:<http://nrsc.news/2KF7oyl>”;
- 5 • On April 29, 2020, “It’s Donald Trump Jr. We’re facing our CRITICAL
6 April deadline so 5X matching is ACTIVE to reach Mitch’s end-of-month
7 goal. DONATE \$15: <http://bit.ly/2WaChjX>”; and
- 8 • On April 30, 2020, “Sarah Huckabee Sanders here. TODAY is a major
9 deadline. Dems are breaking records & we MUST catch up! 5X match for
10 ALL gifts: <https://bit.ly/Goal5X>”.

11 17. Further, all of the text messages solicit Plaintiff to make contributions to the
12 Defendants.

13 18. Plaintiff never consented to receive autodialed text message calls from
14 Defendants or any of their affiliates or agents.

15 19. The text messages were impersonal in nature, and, on information and
16 belief, were placed using an ATDS.

17 20. The text messages direct Plaintiff to WinRed.com.

18 21. After following the website link in the text messages, WinRed’s website
19 requests consumers to consent to receiving calls and texts from an ATDS. Specifically,
20 WinRed asks consumers to agree to the following: “By providing your cell phone or
21 mobile phone number you are consenting to receive calls and texts, including autodialed
22 and automated calls and texts, to that number with campaign notifications from the
23 NRSC”.¹

24 22. This language further demonstrates that WinRed places text messages using
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26 ¹ https://secure.winred.com/nrsc/5x-match-rove?sc=ppp1004m12m&utm_medium=p2pt&utm_source=OK-D&utm_campaign=20200424_OK-D_RoveDefendMajority5XImpact

1 an ATDS.

2 23. Moreover, WinRed's website further states that it is "Paid for by WinRed.
3 Not authorized by any candidate or candidate's committee. WinRed.com". This language
4 clarifies that WinRed is directly involved in soliciting contributions.

5 24. Plaintiff does not have a relationship with either WinRed or NRSC, has
6 never provided her telephone number directly to either Defendant, has never requested
7 that Defendants send text messages to her or solicit donations from her. Simply put,
8 Plaintiff has never provided her prior express written consent to Defendants to place text
9 message calls to her and has no business relationship with Defendants.

10 25. By making the unauthorized text message calls as alleged herein,
11 Defendants have caused Plaintiff and the class members actual harm. This includes the
12 aggravation, nuisance and invasions of privacy that result from the placement of such
13 texts, in addition to the wear and tear on their telephones, consumption of battery life, lost
14 cellular minutes, loss of value realized for the monies consumers paid to their wireless
15 carriers for the receipt of such texts, and the diminished use, enjoyment, value, and utility
16 of their telephone plans. Furthermore, Defendants made the texts knowing they trespassed
17 against and interfered with Plaintiff and the other class members' use and enjoyment of,
18 and the ability to access, their cellphones, including the related data, software, and
19 hardware components.

20 26. To redress these injuries, Plaintiff, on behalf of herself and the Class of
21 similarly situated individuals, brings suit under the TCPA, which prohibits unsolicited text
22 message calls to cellular telephones of consumers who have not consented to receive
23 them. On behalf of the Class, Plaintiff seeks an injunction requiring Defendants to cease
24 all unauthorized autodialed text-messaging activities and an award of statutory damages to
25 the class members, together with costs and reasonable attorneys' fees.

26 **CLASS ALLEGATIONS**
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1 27. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
2 23(b)(2) and Rule 23(b)(3) on behalf of herself and the nationwide Class defined below:

3 **Autodialed Text Class:** All persons in the United States who (1) from the
4 date four years prior to the filing of this Complaint through the date notice
5 is sent to the class members; (2) Defendants (or a third person acting on
6 behalf of Defendants) placed at least one text message call; (3) to the
7 person's cellular telephone number; (4) for the purpose of promoting
8 Defendants' products or services; (5) using the same dialing equipment that
9 was used to place the text message call to Plaintiff; and (6) for whom
10 Defendants claims they obtained prior express consent in the same manner
11 as Defendants claims they supposedly obtained prior express consent to
12 place text message calls to the Plaintiff, or for whom they did not obtain
13 prior express written consent.

14 28. The following individuals are excluded from the Class: (1) any Judge or
15 Magistrate presiding over this action and members of their families; (2) Defendants, their
16 subsidiaries, parents, successors, predecessors, and any entity in which Defendants or their
17 parents have a controlling interest and their current or former employees, officers and
18 directors; (3) Plaintiff's counsel and Defendants' counsel; (4) persons who properly
19 execute and file a timely request for exclusion from the Class; (5) the legal
20 representatives, successors or assigns of any such excluded persons; and (6) persons
21 whose claims against Defendants have been fully and finally adjudicated and/or released.
22 Plaintiff anticipates the need to amend the class definitions following appropriate
23 discovery.

24 29. **Numerosity:** The exact size of the Class is unknown and not available to
25 Plaintiff at this time, but it is clear that individual joinder is impracticable. On information
26 and belief, Defendants sent autodialed text messages to thousands of consumers who fall
27 into the definition of the Class. Class members can be easily identified through
28 Defendants' records.

 30. **Typicality:** Plaintiff's claims are typical of the claims of other members of
the Class, in that Plaintiff and the members of the Class sustained damages arising out of

1 Defendants' uniform wrongful conduct.

2 31. **Adequate Representation:** Plaintiff will fairly and adequately represent and
3 protect the interests of the Class and has retained counsel competent and experienced in
4 class actions. Plaintiff has no interests antagonistic to those of the Class, and Defendants
5 have no defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously
6 prosecuting this action on behalf of the members of the Class, and have the financial
7 resources to do so. Neither Plaintiff nor her counsel has any interest adverse to the Class.

8 32. **Commonality and Predominance:** There are many questions of law and
9 fact common to the claims of Plaintiff and the Class, and those questions predominate
10 over any questions that may affect individual members of the Class. Common questions
11 for the Class include, but are not necessarily limited to the following:

- 12 (a) Whether Defendants' conduct constitutes a violation of the TCPA;
- 13 (b) Whether Defendants utilized an automatic telephone dialing system to
14 place the text message calls to Plaintiff and members of the Autodialed
15 Text Class;
- 16 (c) Whether Defendants obtained prior express written consent to contact
17 any class members;
- 18 (d) Whether Plaintiff and the class members are entitled to statutory
19 damages; and
- 20 (e) Whether Plaintiff and the class members are entitled to treble damages
21 based on the willfulness of Defendants' conduct.

22 33. **Superiority & Manageability:** This case is also appropriate for class
23 certification under Rule 23(b)(3) because class proceedings are superior to all other
24 available methods for the fair and efficient adjudication of this controversy. Joinder of all
25 parties is impracticable, and the damages suffered by the individual members of the Class
26 will likely be relatively small, especially given the burden and expense of individual
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1 prosecution of the complex litigation necessitated by Defendants' actions. Thus, it would
2 be virtually impossible for the individual members of the Class to obtain effective relief
3 from Defendants' misconduct. Even if members of the Class could sustain such individual
4 litigation, it would still not be preferable to a class action, because individual litigation
5 would increase the delay and expense to all parties due to the complex legal and factual
6 controversies presented in this Complaint. By contrast, a class action presents far fewer
7 management difficulties and provides the benefits of single adjudication, economy of
8 scale, and comprehensive supervision by a single Court. Economies of time, effort and
9 expense will be fostered and uniformity of decisions ensured. Also, there are no pending
10 governmental actions against Defendants for the same conduct.

11 34. **Conduct Similar Towards All Class Members:** By committing the acts set
12 forth in this pleading, Defendants have acted or refused to act on grounds substantially
13 similar towards all members of the Class so as to render final injunctive relief and
14 corresponding declaratory relief appropriate so as to warrant certification under Rule
15 23(b)(2).

16 **CAUSE OF ACTION**

17 **Violation of 47 U.S.C. § 227, et seq.**

18 **(On Behalf of Plaintiff and the Autodialed Text Class)**

19 35. Plaintiff repeats and realleges the above paragraphs of this Complaint and
20 incorporates them herein by reference.

21 36. Defendants (or a third person acting on behalf of Defendants) made
22 unsolicited and unwanted autodialed text message calls to cellular telephone numbers
23 belonging to Plaintiff and the other members of the Autodialed Text Class, without their
24 prior express written consent in an effort to solicit consumers to contribute to the
25 Defendants.

26 37. Further, Defendants placed the text message calls using equipment that, on
27 information and belief, had the capacity to store or produce telephone numbers to be
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1 called, using a random or sequential number generator, and/or receive and store lists of
2 phone numbers, and to dial such numbers, *en masse*, without human intervention.

3 38. The telephone dialing equipment utilized by Defendants (or a third person
4 acting on behalf of Defendants), which is substantially similar to a predictive dialer, dialed
5 numbers from a list, or dialed numbers from a database of telephone numbers, in an
6 automatic and systematic manner.

7 39. Further, these text messages were made *en masse* and without the prior
8 express written consent of the Plaintiff and the other members of the Autodialed Text
9 Class to receive such wireless spam.

10 40. By sending the unsolicited text message calls to Plaintiff and members of
11 the Autodialed Text Class's cellular telephones without prior express written consent,
12 Defendants have violated 47 U.S.C. § 227(b)(1)(A)(iii).

13 41. As a result of such conduct, Plaintiff and the other members of the
14 Autodialed Text Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of
15 \$500.00 in damages for each violation of such act.

16 42. In the event that the Court determines that Defendants' conduct was willful
17 and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of statutory
18 damages recoverable by Plaintiff and the other members of the Autodialed Text Class.

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff Brenda Whittaker, individually and on behalf of the
21 Class, prays for the following relief:

22 A. An order certifying the Class as defined above, appointing Plaintiff Brenda
23 Whittaker as the representative of the Class, and appointing her counsel as Class Counsel;

24 B. An award of actual monetary loss from such violations or the sum of five
25 hundred dollars (\$500.00) for each violation, whichever is greater all to be paid into a
26 common fund for the benefit of the Plaintiff and the Class Members;

1 C. An order declaring that Defendants' actions, as set out above, violate TCPA;

2 D. A declaratory judgment that Defendants' telephone dialing equipment
3 constitutes an automatic telephone dialing system under the TCPA;

4 E. An injunction requiring Defendants to cease all unsolicited autodialed text
5 messaging activities, and otherwise protecting the interests of the Class;

6 F. An award of reasonable attorneys' fees and costs to be paid out of the
7 common fund prayed for above; and

8 G. Such other and further relief that the Court deems reasonable and just.

9 **JURY DEMAND**

10 Plaintiff requests a trial by jury of all claims that can be so tried.

11
12 Respectfully submitted,

13 Dated: June 18, 2020

BRENDA WHITTAKER, individually and on
14 behalf of all others similarly situated,

15 By: /s/ _____
16 One of Plaintiff's Attorneys

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Attorneys for Plaintiff and the Class

* *Pro Hac Vice admission to be sought*

**UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA**

Civil Cover Sheet

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the
Complaint or Notice of Removal.**

Plaintiff(s): Brenda Whittaker

**Defendant(s): WinRed Technical Services, LLC, a
Delaware limited liability company,
and National Republican Senatorial
Committee, a District of Columbia
non-profit organization,**

County of Residence: Yavapai

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Yavapai

Plaintiff's Atty(s):

Defendant's Atty(s):

**Penny L. Koepke (Brenda Whittaker)
Maxwell & Morgan, P.C.
4854 E. Baseline Road, Suite 104
Mesa, Arizona 85206
4808331001**

II. Basis of Jurisdiction:

3. Federal Question (U.S. not a party)

**III. Citizenship of Principal
Parties (Diversity Cases Only)**

Plaintiff:- N/A

Defendant:- N/A

IV. Origin :

1. Original Proceeding

V. Nature of Suit:

890 Other Statutory Actions

VI. Cause of Action:

Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq.

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:

Jury Demand: **Yes**

6/16/2020

www.azd.uscourts.gov/cgi-bin/generate_civil_js44.pl

VIII. This case is not related to another case.

Signature: /s/ Penny L. Koepke

Date: 6/18/2020

If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.

Revised: 01/2014

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [WinRed, National Republican Senatorial Committee Face Class Action Over Automated Campaign Texts](#)
