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16 *Class*

17 **IN THE UNITED STATE DISTRICT COURT**
18 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

19 RYAN COYLE, on behalf of himself
20 and others similarly situated,

21 Plaintiff,

22 v.

23 DESERT LAKE GROUP, LLC, d/b/a
24 FIRST CLASS HERB TINCTURE,
25 d/b/a FIRST CLASS HERBALIST
26 CBD, d/b/a FIRST CLASS
27 HERBALIST OILS, d/b/a USA
28 HERBALIST OILS

Defendant.

Case No. '20CV0076 DMS BLM

CLASS ACTION COMPLAINT

**VIOLATIONS OF THE
TELEPHONE CONSUMER
PROTECTION ACT OF 1991, 47
U.S.C § 227**

DEMAND FOR JURY TRIAL

1 **NATURE OF THIS ACTION**

2 1. Plaintiff Ryan Coyle (“Coyle” or “Plaintiff”) individually and on behalf of
3 the proposed Class defined below, brings this class action lawsuit for damages resulting
4 from the unlawful actions of Defendant Desert Lake Group, LLC, d/b/a First Class Herb
5 Tincture, d/b/a First Class Herbalist CBD, d/b/a First Class Herbalist Oils, d/b/a USA
6 Herbalist Oils (“Desert Lake”), (“Desert Lake” or “Defendant”). As detailed below,
7 Defendant negligently, knowingly, and/or willfully placed unsolicited automated text
8 messages to Plaintiff’s cellular telephone in violation of the Telephone Consumer
9 Protection Act, 47 U.S.C. § 227, *et seq.* (the “TCPA”). Plaintiff alleges as follows upon
10 personal knowledge as to himself and his own experiences and, as to all other matters,
11 upon information and belief including due investigation conducted by his attorneys.

12 2. This case is brought to enforce the consumer privacy provisions afforded by
13 the TCPA, a federal law that was designed to curtail abusive telemarketing practices
14 precisely like those described herein.

15 3. Defendant has violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §
16 64.1200(a)(2) by using an automatic telephone dialing system (“ATDS”) to bombard
17 consumers’ mobile phones with non-emergency advertising and marketing text messages
18 without prior express written consent.

19 **JURISDICTION AND VENUE**

20 4. This Court has federal question subject matter jurisdiction over this class
21 action lawsuit pursuant to 28 U.S.C. § 1331 as Plaintiff alleges violations of a federal
22 statute, the TCPA.

23 5. This Court has personal jurisdiction over Defendant which engaged in a
24 nationwide telemarketing campaign, including in this District. Specifically, Plaintiff
25 Coyle received text messages sent by Defendant that form the basis of his claims within
26 this District.

27 6. Venue is proper in the United States District Court for the Southern District
28

1 of California pursuant to 28 U.S.C. § 1391(b) and (c) because a substantial portion of the
2 events alleged herein occurred within this District. Specifically, Plaintiff Coyle received
3 the text messages sent by Defendant that form the basis of his claims within this District.

4 **PARTIES**

5 7. Plaintiff Ryan Coyle is an individual who, at all relevant times, resided in
6 Murrieta, California.

7 8. Defendant Desert Lake Group, LLC, d/b/a First Class Herb Tincture, d/b/a
8 First Class Herbalist CBD, d/b/a First Class Herbalist Oils, d/b/a USA Herbalist Oils is a
9 limited liability company organized under the laws of the State of Utah and with its
10 principal place of business in Cottonwood Heights, Utah.

11 9. Desert Lake is, and at all times mentioned herein was a “person,” as defined
12 by 47 U.S.C. § 153(39).

13 **TCPA BACKGROUND**

14 10. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
15 telemarketing industry.

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

21 12. In enacting the TCPA, Congress intended to give consumers a choice as to
22 how creditors and telemarketers may call them, and made specific findings that
23 “[t]echnologies that might allow consumers to avoid receiving such calls are not
24 universally available, are costly, are unlikely to be enforced, or place an inordinate
25 burden on the consumer.” TCPA, Pub.L. No. 102-243, § 11. Toward this end, Congress
26 found that:

27 Banning such automated or prerecorded telephone calls to the
28 home, except when the receiving party consents to receiving the

1 call or when such calls are necessary in an emergency situation
2 affecting the health and safety of the consumer, is the only
3 effective means of protecting telephone consumers from this
4 nuisance and privacy invasion.

5 *Id.* at § 12; *see also*, *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
6 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional finding on TCPA’s
7 purpose).

8 13. Congress also specifically found that “the evidence presented to the
9 Congress indicates that automated or prerecorded calls are a nuisance and an invasion of
10 privacy, regardless of the type of call [...]” *Id.* At §§ 12-13; *see also*, *Mims*, 132 S. Ct.
11 at 744.

12 14. As Judge Easterbrook of the Seventh Circuit explained in a TCPA case
13 regarding calls to a non-debtor similar to this one:

14 The Telephone Consumer Protection Act [...] is well known for
15 its provisions limiting junk-fax transmissions. A less litigated
16 part of the Act curtails the use of automated dialers and
17 prerecorded messages to cell phones, whose subscribers often
18 are billed by the minute as soon as the call is answered – and
19 routing a call to voicemail counts as answering the call. An
20 automated call to a landline phone can be an annoyance; an
21 automated call to a cell phone adds expense to annoyance.

22 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

23 15. The TCPA makes it “unlawful for any person within the United States . . . to
24 make any call (other than a call made for emergency purposes or made with the prior
25 express consent of the called party) using any automatic telephone dialing system or an
26 artificial or prerecorded voice . . . to any telephone number assigned to a paging service,
27 cellular telephone service, specialized mobile radio service, or other radio common
28 carrier service, or any service for which the called party is charged for the call” 47
U.S.C. § 227(b)(1)(A)(iii).

1 16. Text messages are calls and are subject to the TCPA. *See, e.g., Campbell-*
2 *Ewald Co. v. Gomez*, 136 S. Ct. 663, 666 (2016); *Satterfield v. Simon & Schuster, Inc.*,
3 569 F.3d 946, 954 (9th Cir. 2009).

4 17. 47 C.F.R. § 64.1200(a)(2) additionally states, with respect to advertisement
5 and telemarketing calls—of which Defendant’s text to Plaintiff is—that “[n]o person or
6 entity may . . . [i]nitiate or cause to be initiated, any telephone call that includes or
7 introduces an advertisement or constitutes telemarketing, using an automatic telephone
8 dialing system or an artificial or prerecorded voice, to any of the lines or telephone
9 numbers described in paragraphs (a)(1)(i) through (iii) of this section, other than a call
10 made with the prior express written consent of the called party”

11 18. 47 C.F.R. § 64.1200(f)(8) defines “prior express written consent” as “an
12 agreement, in writing, bearing the signature of the person called that clearly authorizes
13 the seller to deliver or cause to be delivered to the person called advertisements or
14 telemarketing messages using an automatic telephone dialing system or an artificial or
15 prerecorded voice, and the telephone number to which the signatory authorizes such
16 advertisements or telemarketing messages to be delivered.”

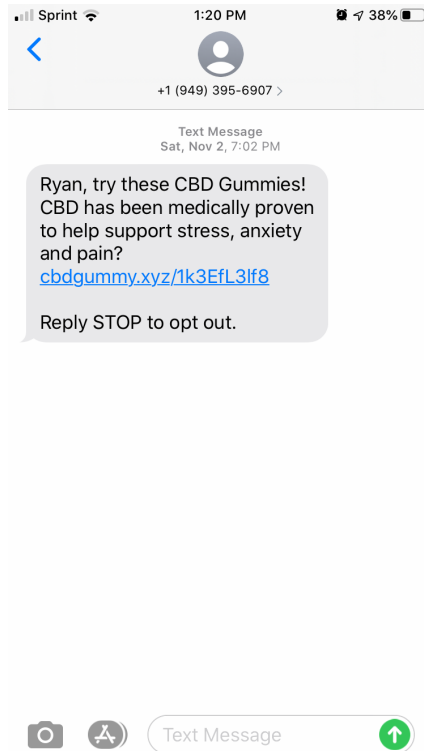
17 19. To state a claim for a violation of the TCPA, a plaintiff must only show that
18 he or she received a call made using an ATDS or featuring a prerecorded voice; consent
19 is an affirmative defense to liability under the TCPA. *See Meyer v. Portfolio Recovery*
20 *Assocs., LLC*, 707 F.3d 1036, 1042 (9th Cir. 2012) (finding Defendant “did not show a
21 single instance where express consent was given before the call was placed.”)

22 20. The TCPA provides for damages in the amount of \$500 for each negligent
23 violation and \$1,500 for each knowing violation. *See* 47 U.S.C. § 227(b)(3).

24 **FACTUAL ALLEGATIONS**

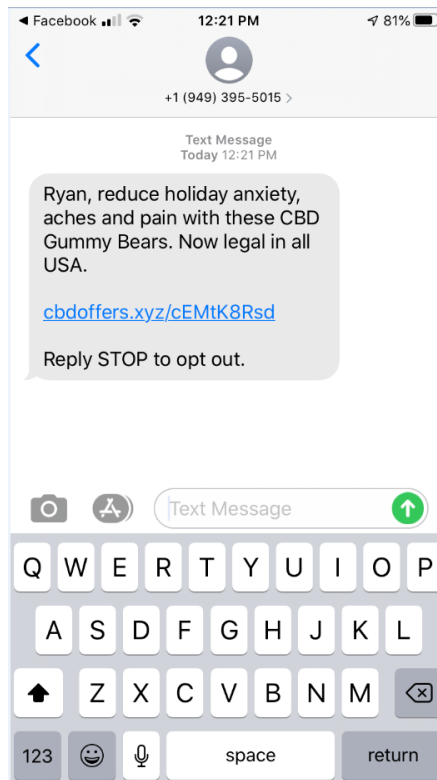
25 21. Plaintiff Ryan Coyle is, and has been at all times relevant to this action, the
26 regular and sole user of his cellular telephone number—(951) 837-XXXX.
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1 22. On or about November 2, 2019, at approximately 7:02 PM, Defendant sent
2 an automated text message to Plaintiff Coyle's cellular telephone number from the
3 telephone number (949) 395-6907. A true and correct copy of the November 2, 2019 text
4 message sent by Defendant is reproduced below:



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18 23. The link embedded in the text message ([cbdgummy.xyz/1k3EfL3lf8](\"http://cbdgummy.xyz/1k3EfL3lf8\"))
19 redirects the recipient to a website which sells and promotes products and services
20 offered by Defendant, including the CBD Gummies described in the body of the text.

21 24. On or about December 19, 2019, at approximately 12:21 PM, Defendant
22 sent an automated text message to Plaintiff Coyle's cellular telephone number from the
23 telephone number (949) 395-5015. A true and correct copy of the December 19, 2019
24 text message sent by Defendant is reproduced below:
25
26
27
28



25. The link embedded in the text message (cbdooffers.xyz/cEMtK8Rsd) redirects the recipient to a website which sells and promotes products and services offered by Defendant, including the CBD Gummies described in the body of the text.

26. Plaintiff did not give Defendant prior express written consent to send text messages to his cellular telephone numbers by using an automatic telephone dialing system.

27. The text messages Defendant sent to Plaintiff consisted of pre-written templates of impersonal text, and were identical to text messages Defendant sent to other consumers.

28. The language in the messages was automatically generated and inputted into pre-written text templates without any actual human intervention in the drafting or sending of the messages; the same exact messages were sent to thousands of other consumers.

1 29. The telephone system Defendant used to send the message constitutes an
2 ATDS as defined by 47 U.S.C. § 227(a)(1).

3 30. Upon information and good faith belief, and in light of the nature and
4 character of the text messages at issue—standardized, impersonal, and consistent in
5 structure and format—the advertisement and marketing text messages at issue were sent
6 by using “equipment which has the capacity—(1) to store numbers to be called or (2) to
7 produce numbers to be called, using a random or sequential number generator—and to
8 dial such numbers automatically (even if the system must be turned on or triggered by a
9 person).” *Marks v. Crunch San Diego, LLC*, 904 F.3d 1041, 1053 (9th Cir. 2018).

10 31. Upon information and belief, no human directed any single text message to
11 Plaintiff’s cellular telephone number.

12 32. In addition, upon information and belief the hardware and software
13 combination utilized by Defendant has the capacity to store and dial sequentially
14 generated numbers, randomly generated numbers or numbers from a database of
15 numbers.

16 33. Defendant did not have Plaintiff’s prior express consent to place automated
17 text messages to Plaintiff on his cellular telephones.

18 34. Receipt of Defendant’s unauthorized messages drained Plaintiff’s phone
19 batteries and caused Plaintiff additional electricity expenses and wear and tear on his
20 phone and battery.

21 35. Defendant did not place the text message for an emergency purpose.

22 36. Through the aforementioned conduct, Defendant violated 47 U.S.C. §
23 227(b)(1)(A)(iii).

24 **STANDING**

25 37. Standing is proper under Article III of the Constitution of the United States
26 of America because Plaintiff’s claims state: (a) a valid injury in fact; (b) which is
27 traceable to the conduct of Defendant; and (c) is likely to be redressed by a favorable
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1 judicial decision. *See, Spokeo, Inc. v. Robins*, 136 S.Ct. 1540, 1547 (2016); *Lujan v.*
2 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

3 **The “Injury In Fact” Prong**

4 38. Plaintiff’s injury in fact must be both “concrete” and “particularized” in
5 order to satisfy the requirements of Article III of the Constitution, as articulated in
6 *Spokeo. Spokeo*, 136 S.Ct. at 1547.

7 39. For an injury to be “concrete” it must be a de facto injury, meaning that it
8 actually exists. *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir.
9 2012). In this case, Defendant sent text messages to Plaintiff’s cellular telephone, using
10 an ATDS. Such text messages are a nuisance, an invasion of privacy, and an expense to
11 Plaintiff. All three of these injuries are concrete and de facto.

12 40. For an injury to be “particularized” means that the injury must “affect the
13 Plaintiff in a personal and individual way.” *Spokeo, Inc.*, 136 S.Ct. at 1543. In this case,
14 Defendant invaded Plaintiff’s privacy and peace by texting his cellular telephone, and did
15 this with the use of an ATDS. Furthermore, Plaintiff was distracted and annoyed by
16 having to take time, opening and reading the text messages. All of these injuries are
17 particularized and specific to Plaintiff, and will be the same injuries suffered by each
18 member of the putative class.

19 **The “Traceable to the Conduct of Defendant” Prong**

20 41. The second prong required to establish standing at the pleadings phase is
21 that Plaintiff must allege facts to show that its injuries are traceable to the conduct of
22 Defendant.

23 42. The above text messages were directly and explicitly linked to Defendant.
24 The link embedded in the text belongs to Defendant. The text messages are the sole
25 source of Plaintiff’s and the Class’s injuries. Therefore, Plaintiff has alleged facts that
26 show that their injuries are traceable to the conduct of Defendant.

The “Injury is Likely to be Redressed by a Favorable Judicial Opinion” Prong

43. The third prong to establish standing at the pleadings phase requires Plaintiff to allege facts to show that the injury is likely to be redressed by a favorable judicial opinion.

44. In the present case, Plaintiff’s Prayers for Relief include a request for damages for each text message made by Defendant, as authorized by statute in 47 U.S.C. § 227. The statutory damages were set by Congress and specifically redress the financial damages suffered by Plaintiff and the members of the putative class.

45. Because all standing requirements of Article III of the U.S. Constitution have been met, Plaintiff has standing to sue Defendant on the stated claims.

CLASS ACTION ALLEGATIONS

46. Plaintiff brings this action under Federal Rule of Civil Procedure 23, and as representatives of the following class:

All persons throughout the United States (1) to whom Defendant delivered, or caused to be delivered, a text message, (2) directed to a number assigned to a cellular telephone service, (3) by using an automatic telephone dialing system, (4) within four years preceding the date of this complaint through the date of class certification, and for whom (5) Defendant did not claim to have obtained prior express written consent, or claim to have obtained prior express written consent in the same manner they claim to have obtained prior express written consent from Plaintiff.

47. Excluded from the class are Defendant, its officers and directors, members of their immediate families and their legal representatives, heirs, successors, or assigns, and any entity in which Defendant have or had a controlling interest.

48. Plaintiff reserves the right to redefine the class and to add subclasses as appropriate based on discovery and specific theories of liability.

49. Numerosity: Upon information and belief, the members of the class are so

1 numerous that joinder of all of them is impracticable.

2 50. The exact number of the members of the class is unknown to Plaintiff at this
3 time, and can (and will) be determined through appropriate discovery. However, given
4 that, on information and belief, Defendant texted thousands of class members nationwide
5 during the class period, it is reasonable to presume that the members of the Class are so
6 numerous that joinder of all members is impracticable. The disposition of the claims in a
7 class action will provide substantial benefits to the parties and the Court.

8 51. Ascertainability: The members of the class are ascertainable because the
9 class is defined by reference to objective criteria.

10 52. In addition, the members of the class are identifiable in that, upon
11 information and belief, their cellular telephone numbers, names and addresses can be
12 identified in business records maintained by Defendant and by third parties.

13 53. Typicality: Plaintiff's claims are typical of the claims of the members of the
14 class. Plaintiff has had to suffer the burden of receiving text messages to his cellular
15 telephone from an ATDS. Thus, their injuries are typical to Class Members. As they did
16 for all members of the class, Defendant used an ATDS to deliver text messages to
17 Plaintiff's cellular telephone number.

18 54. Plaintiff's claims, and the claims of the members of the class, originate from
19 the same conduct, practice and procedure on the part of Defendant.

20 55. Plaintiff's claims are based on the same theories, as are the claims of the
21 members of the class.

22 56. Plaintiff and Class Members were harmed by the acts of Defendant in at
23 least the following ways: Defendant harassed Plaintiff and Class Members by illegally
24 texting their cellular phones using an ATDS. Plaintiff and the class were damaged
25 thereby.

26 57. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect the
27 interests of the members of the class with whom they are similarly situated, as
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1 demonstrated herein. Plaintiff acknowledges that they have an obligation to make known
2 to the Court any relationships, conflicts, or differences with any Class Member.

3 58. Plaintiff's interests in this matter are not directly or irrevocably antagonistic
4 to the interests of the members of the class.

5 59. Plaintiff will vigorously pursue the claims of the members of the class.

6 60. Plaintiff has retained counsel experienced and competent in class action
7 litigation. Plaintiff's attorneys, the proposed class counsel, are versed in the rules
8 governing class action discovery, certification, and settlement. In addition, the proposed
9 class counsel is experienced in handling claims involving consumer actions and violations
10 of the TCPA.

11 61. Plaintiff's counsel will vigorously pursue this matter.

12 62. Plaintiff's counsel will assert, protect and otherwise represent the members
13 of the class.

14 63. Plaintiff has incurred, and throughout the duration of this action, will
15 continue to incur costs and attorneys' fees that have been, are, and will be, necessarily
16 expended for the prosecution of this action for the substantial benefit of each Class
17 Member.

18 64. Predominance: The questions of law and fact common to the members of the
19 class predominate over questions that may affect individual members of the class. The
20 elements of the legal claims brought by Plaintiff and Class Members are capable of proof
21 at trial through evidence that is common to the Class rather than individual to its
22 members.

23 65. Commonality: There are common questions of law and fact as to all
24 members of the Class, including but not limited to the following:

25 a. What is Defendant's conduct, pattern, and practice as it pertains to
26 delivering advertisement and telemarketing text messages;

27 b. Whether, within the statutory period, Defendant used an ATDS as
28

1 defined by the TCPA to send text messages to Class Members;

2 c. Whether Defendant's conduct violated the TCPA;

3 d. Whether Defendant should be enjoined from engaging in such
4 conduct in the future; and

5 e. The availability of statutory penalties.

6 66. Superiority: A class action is superior to all other available methods for the
7 fair and efficient adjudication of this matter because:

- 8 • If brought and prosecuted individually, the claims of the members of the
9 class would require proof of the same material and substantive facts.
 - 10 • The pursuit of separate actions by individual members of the class would, as
11 a practical matter, be dispositive of the interests of other members of the
12 class, and could substantially impair or impede their ability to protect their
13 interests.
 - 14 • The pursuit of separate actions by individual members of the class could
15 create a risk of inconsistent or varying adjudications, which might establish
16 incompatible standards of conduct for Defendant.
 - 17 • These varying adjudications and incompatible standards of conduct, in
18 connection with presentation of the same essential facts, proof, and legal
19 theories, could also create and allow the existence of inconsistent and
20 incompatible rights within the class.
 - 21 • The damages suffered by each individual member of the class may be
22 relatively modest, thus, the expense and burden to litigate each of their
23 claims individually make it difficult for the members of the class to redress
24 the wrongs done to them.
 - 25 • Absent a class action, most Class Members would likely find the cost of
26 litigating their claims prohibitively high and would therefore have no
27 effective remedy at law.
- 28

- 1 • The pursuit of Plaintiff’s claims, and the claims of the members of the class,
2 in one forum will achieve efficiency and promote judicial economy.
- 3 • There will be little difficulty in the management of this action as a class
4 action.

5 67. Defendant has acted or refused to act on grounds generally applicable to the
6 members of the class, making final declaratory or injunctive relief appropriate.

7 68. Plaintiff and the Class Members have all suffered and will continue to suffer
8 harm and damages as a result of Defendant’s unlawful conduct.

9 69. This suit seeks only damages and injunctive relief for recovery of economic
10 injury on behalf of Class Members and it expressly is not intended to request any
11 recovery for personal injury and claims related thereto.

12 **COUNT I**

13 **Violations of the Telephone Consumer Protection Act**

14 **47 U.S.C. § 227(b)(1)(A)(iii)**

15 **(On behalf of Plaintiff and the TCPA Class)**

16 70. Plaintiff incorporates herein all preceding factual allegations.

17 71. Defendant and/or their agents placed unsolicited text messages to Plaintiff’s
18 cellular telephone and the cellular telephones of the other members of the TCPA Class
19 using an ATDS.

20 72. Defendant placed these text messages *en masse* without the consent of
21 Plaintiff and the other members of the TCPA Class.

22 73. Defendant’s conduct was negligent, or willful or knowing.

23 74. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1). As a result of
24 Defendant’s conduct, Plaintiff and the other members of the TCPA Class are each
25 entitled to a minimum of \$500 in damages, and up to \$1,500 in damages, for each
26 violation.

27 75. Plaintiff and members of the putative TCPA class are also entitled to and do
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1 seek injunctive relief prohibiting Defendant and/or their affiliates, agents, and/or other
2 persons or entities acting on Defendant's behalf from violating the TCPA, 47 U.S.C. §
3 227, by sending texts, except for emergency purposes, to any cellular telephone numbers
4 using an ATDS in the future.

5 76. Defendant violated 47 U.S.C. § 227(b)(1)(A)(iii) and 47 C.F.R. §
6 64.1200(a)(2) by utilizing an ATDS to make advertising and marketing texts to Plaintiff's
7 cellular telephone numbers without prior express written consent.

8 77. As a result of Defendant's violations of 47 U.S.C. § 227(b)(1)(A)(iii) and 47
9 C.F.R. § 64.1200(a)(2), Plaintiff, and the members of the class, are entitled to damages in
10 an amount to be proven at trial.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff prays for relief and judgment, as follows:

- 13 a) Determining that this action is a proper class action;
- 14 b) Designating Plaintiff as a class representative under Federal Rule of Civil
15 Procedure 23;
- 16 c) Designating Plaintiff's counsel as class counsel under Federal Rule of Civil
17 Procedure 23;
- 18 d) Adjudging and declaring that Defendant violated 47 U.S.C. §
19 227(b)(1)(A)(iii);
- 20 e) Enjoining Defendant from continuing their violative behavior, including
21 continuing to deliver text messages to Plaintiff's cellular telephone number,
22 and to the cellular telephone numbers of the members of the class, without
23 prior express written consent;
- 24 f) Awarding Plaintiff and the members of the class damages under 47 U.S.C. §
25 227(b)(3)(B) in the amount of \$500.00 per unlawful text message to
26 Plaintiff, and each class member;
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- 1 g) Awarding Plaintiff and the members of the class treble damages under 47
2 U.S.C. § 227(b)(3)(C);
3 h) Awarding Plaintiff and the class reasonable attorneys’ fees, costs, and
4 expenses under Rule 23 of the Federal Rules of Civil Procedure;
5 i) Awarding Plaintiff and the members of the class any pre-judgment and post-
6 judgment interest as may be allowed under the law; and
7 j) Awarding such other and further relief as the Court may deem just and
8 proper.

9 **DEMAND FOR JURY TRIAL**

10 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury
11 of any and all triable issues.

12
13 Dated: January 10, 2020

Respectfully submitted,

14
15 s/ Abbas Kazerounian
16 Abbas Kazerounian, Esq.

17 *Counsel for Plaintiff and the Putative*
18 *Class*