

1 Todd M. Friedman (SBN 216752)
 2 Adrian R. Bacon (SBN 280332)
 3 LAW OFFICES OF TODD M. FRIEDMAN, P.C.
 4 21550 Oxnard St., Suite 780
 5 Woodland Hills, CA 91367
 6 Phone: 877-619-8966
 7 Fax: 866-633-0228
 8 tfriedman@ toddflaw.com
 9 abacon@ toddflaw.com
 10 *Attorneys for Plaintiff*

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

	)	Case No.
JEREMY BERGER, individually and)	
on behalf of all others similarly situated,	)	<u>CLASS ACTION</u>
Plaintiff,	)	COMPLAINT FOR VIOLATIONS
	)	OF:
vs.)	
	)	1. NEGLIGENT VIOLATIONS
THERAPEUTIC HEMP, INC. d/b/a	)	OF THE TELEPHONE
420 CENTRAL, and DOES 1 through	)	CONSUMER PROTECTION
10, inclusive, and each of them,	)	ACT [47 U.S.C. §227(b)]
	)	2. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
Defendant.	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(b)]
	)	3. NEGLIGENT VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
	)	4. WILLFUL VIOLATIONS
	)	OF THE TELEPHONE
	)	CONSUMER PROTECTION
	)	ACT [47 U.S.C. §227(c)]
)	
	)	<u>DEMAND FOR JURY TRIAL</u>
)	
)	
)	

27 Plaintiff JEREMY BERGER (“Plaintiff”), individually and on behalf of all

1 others similarly situated, alleges the following upon information and belief based
2 upon personal knowledge:

3 **NATURE OF THE CASE**

4 1. Plaintiff brings this action individually and on behalf of all others
5 similarly situated seeking damages and any other available legal or equitable
6 remedies resulting from the illegal actions of THERAPEUTIC HEMP, INC. d/b/a
7 420 CENTRAL (“Defendant”), in negligently, knowingly, and/or willfully
8 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
9 Consumer Protection Act, *47 U.S.C. § 227 et seq.* (“TCPA”) and related
10 regulations, specifically the National Do-Not-Call provisions, thereby invading
11 Plaintiff’s privacy.

12 **JURISDICTION & VENUE**

13 2. Jurisdiction is proper under *28 U.S.C. § 1331* because Plaintiff’s
14 claims arise under a law of the United States, the TCPA.

15 3. Venue is proper in the United States District Court for the Central
16 District of California pursuant to *28 U.S.C. 1391(b)* because Defendant resides
17 within this District.

18 **PARTIES**

19 4. Plaintiff, JEREMY BERGER (“Plaintiff”), is a natural person residing
20 in Yorba Linda, California and is a “person” as defined by *47 U.S.C. § 153 (39)*.

21 5. Defendant, THERAPEUTIC HEMP, INC. d/b/a 420 CENTRAL
22 (“Defendant”) is a cannabis dispensary, and is a “person” as defined by *47 U.S.C.*
23 *§ 153 (39)*.

24 6. The above-named Defendant, and its subsidiaries and agents, are
25 collectively referred to as “Defendants.” The true names and capacities of the
26 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
27 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
28 names. Each of the Defendants designated herein as a DOE is legally responsible

1 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
2 Complaint to reflect the true names and capacities of the DOE Defendants when
3 such identities become known.

4 7. Plaintiff is informed and believes that at all relevant times, each and
5 every Defendant was acting as an agent and/or employee of each of the other
6 Defendants and was acting within the course and scope of said agency and/or
7 employment with the full knowledge and consent of each of the other Defendants.
8 Plaintiff is informed and believes that each of the acts and/or omissions complained
9 of herein was made known to, and ratified by, each of the other Defendants.

10 **FACTUAL ALLEGATIONS**

11 8. Beginning during or about March 2018, Defendant contacted Plaintiff
12 on Plaintiff's cellular telephone number ending in -8552, in an attempt to solicit
13 Plaintiff to purchase Defendant's products.

14 9. Defendant used an "automatic telephone dialing system" as defined
15 by *47 U.S.C. § 227(a)(1)* to place its text messages to Plaintiff seeking to sell its
16 products.

17 10. Defendant contacted or attempted to contact Plaintiff from multiple
18 telephone numbers including, but not limited to, 938-800-0786, 318-257-6285,
19 515-325-8842, 201-503-7242, 432-278-1754, 938-800-0908, 202-765-3834, 424-
20 312-0656, 636-306-3292, 918-302-2757, and 973-755-1764.

21 11. Defendant's text messages constituted calls that were not for
22 emergency purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

23 12. During all relevant times, Defendant did not possess Plaintiff's "prior
24 express consent" to receive text messages using an automatic telephone dialing
25 system or an artificial or prerecorded voice on his cellular telephone pursuant to *47*
26 *U.S.C. § 227(b)(1)(A)*.

27 13. Further, Plaintiff's cellular telephone number ending in -8552 was
28 added to the National Do-Not-Call Registry on or about March 1, 2018.

1 14. Defendant placed multiple text messages soliciting its business to
2 Plaintiff on his cellular telephone ending in -8552 starting during or about March
3 2018 and continuing through January 2020.

4 15. Such text messages constitute solicitation calls pursuant to 47 C.F.R.
5 § 64.1200(c)(2) as they were attempts to promote or sell Defendant's products.

6 16. Plaintiff received numerous solicitation text messages from Defendant
7 within a period of approximately two years.

8 **CLASS ALLEGATIONS**

9 17. Plaintiff brings this action individually and on behalf of all others
10 similarly situated, as a member two proposed classes (hereafter, jointly, "The
11 Classes"). The class concerning the ATDS claim for no prior express consent
12 (hereafter "The ATDS Class") is defined as follows:

13 All persons within the United States who received any
14 solicitation/telemarketing text messages from Defendant
15 to said person's cellular telephone made through the use
16 of any automatic telephone dialing system and such
17 person had not previously consented to receiving such
18 calls, or who had revoked such consent, within the four
19 years prior to the filing of the Complaint through the date
20 of class certification.

21 18. The class concerning the National Do-Not-Call violation (hereafter
22 "The DNC Class") is defined as follows:

23 All persons within the United States registered on the
24 National Do-Not-Call Registry for at least 30 days, who
25 had not granted Defendant prior express consent nor had
26 a prior established business relationship with Defendant,
27 or who had revoked such consent or prior business
28 relationship, who received more than one text message
made by or on behalf of Defendant that promoted
Defendant's products or services, within any twelve-
month period, within four years prior to the filing of the

1 Complaint through the date of class certification.

2 19. Plaintiff represents, and is a member of, The ATDS Class, consisting
3 of all persons within the United States who received any solicitation telephone calls
4 from Defendant to said person's cellular telephone made through the use of any
5 automatic telephone dialing system or an artificial or prerecorded voice and such
6 person had not previously not provided their cellular telephone number to
7 Defendant within the four years prior to the filing of the Complaint.

8 20. Plaintiff represents, and is a member of, The DNC Class, consisting
9 of all persons within the United States registered on the National Do-Not-Call
10 Registry for at least 30 days, who had not granted Defendant prior express consent
11 nor had a prior established business relationship, who received more than one call
12 made by or on behalf of Defendant that promoted Defendant's products or services,
13 within any twelve-month period, within four years prior to the filing of the
14 Complaint.

15 21. Defendant, its employees and agents are excluded from The Classes.
16 Plaintiff does not know the number of members in The Classes, but believes the
17 Classes members number in the thousands, if not more. Thus, this matter should
18 be certified as a Class Action to assist in the expeditious litigation of the matter.

19 22. The Classes are so numerous that the individual joinder of all of its
20 members is impractical. While the exact number and identities of The Classes
21 members are unknown to Plaintiff at this time and can only be ascertained through
22 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
23 The Classes includes thousands of members. Plaintiff alleges that The Classes
24 members may be ascertained by the records maintained by Defendant.

25 23. Plaintiff and members of The ATDS Class were harmed by the acts of
26 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
27 and ATDS Class members via their cellular telephones thereby causing Plaintiff
28

1 and ATDS Class members to incur certain charges or reduced telephone time for
2 which Plaintiff and ATDS Class members had previously paid by having to retrieve
3 or administer messages left by Defendant during those illegal calls, and invading
4 the privacy of said Plaintiff and ATDS Class members.

5 24. Common questions of fact and law exist as to all members of The
6 ATDS Class which predominate over any questions affecting only individual
7 members of The ATDS Class. These common legal and factual questions, which
8 do not vary between ATDS Class members, and which may be determined without
9 reference to the individual circumstances of any ATDS Class members, include,
10 but are not limited to, the following:

- 11 a. Whether, within the four years prior to the filing of this
12 Complaint, Defendant made any telemarketing/solicitation call
13 (other than a call made for emergency purposes or made with
14 the prior express consent of the called party) to an ATDS Class
15 member using any automatic telephone dialing system to any
16 telephone number assigned to a cellular telephone service;
- 17 b. Whether Plaintiff and the ATDS Class members were damaged
18 thereby, and the extent of damages for such violation; and
- 19 c. Whether Defendant should be enjoined from engaging in such
20 conduct in the future.

21 25. As a person that received numerous telemarketing/solicitation calls
22 from Defendant using an automatic telephone dialing system, without Plaintiff's
23 prior express consent, Plaintiff is asserting claims that are typical of The ATDS
24 Class.

25 26. Plaintiff and members of The DNC Class were harmed by the acts of
26 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
27 and DNC Class members via their telephones for solicitation purposes, thereby
28 invading the privacy of said Plaintiff and the DNC Class members whose telephone

1 numbers were on the National Do-Not-Call Registry. Plaintiff and the DNC Class
2 members were damaged thereby.

3 27. Common questions of fact and law exist as to all members of The
4 DNC Class which predominate over any questions affecting only individual
5 members of The DNC Class. These common legal and factual questions, which do
6 not vary between DNC Class members, and which may be determined without
7 reference to the individual circumstances of any DNC Class members, include, but
8 are not limited to, the following:

- 9 a. Whether, within the four years prior to the filing of this
10 Complaint, Defendant or its agents placed more than one
11 solicitation call to the members of the DNC Class whose
12 telephone numbers were on the National Do-Not-Call Registry
13 and who had not granted prior express consent to Defendant and
14 did not have an established business relationship with
15 Defendant, or who had revoked such consent or business
16 relationship;
- 17 b. Whether Defendant obtained prior express written consent to
18 place solicitation calls to Plaintiff or the DNC Class members'
19 telephones;
- 20 c. Whether Plaintiff and the DNC Class member were damaged
21 thereby, and the extent of damages for such violations; and
- 22 d. Whether Defendant and its agents should be enjoined from
23 engaging in such conduct in the future.

24 28. As a person that received numerous solicitation calls from Defendant
25 within a 12-month period, who had not granted Defendant prior express consent
26 and did not have an established business relationship with Defendant, Plaintiff is
27 asserting claims that are typical of the DNC Class.

28 29. Plaintiff will fairly and adequately protect the interests of the members

1 of The Classes. Plaintiff has retained attorneys experienced in the prosecution of
2 class actions.

3 30. A class action is superior to other available methods of fair and
4 efficient adjudication of this controversy, since individual litigation of the claims
5 of all Classes members is impracticable. Even if every Classes member could
6 afford individual litigation, the court system could not. It would be unduly
7 burdensome to the courts in which individual litigation of numerous issues would
8 proceed. Individualized litigation would also present the potential for varying,
9 inconsistent, or contradictory judgments and would magnify the delay and expense
10 to all parties and to the court system resulting from multiple trials of the same
11 complex factual issues. By contrast, the conduct of this action as a class action
12 presents fewer management difficulties, conserves the resources of the parties and
13 of the court system, and protects the rights of each Classes member.

14 31. The prosecution of separate actions by individual Classes members
15 would create a risk of adjudications with respect to them that would, as a practical
16 matter, be dispositive of the interests of the other Classes members not parties to
17 such adjudications or that would substantially impair or impede the ability of such
18 non-party Class members to protect their interests.

19 32. Defendant has acted or refused to act in respects generally applicable
20 to The Classes, thereby making appropriate final and injunctive relief with regard
21 to the members of the Classes as a whole.

22 **FIRST CAUSE OF ACTION**

23 **Negligent Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. §227(b).**

25 **On Behalf of the ATDS Class**

26 33. Plaintiff repeats and incorporates by reference into this cause of action
27 the allegations set forth above at Paragraphs 1-32.

28 34. The foregoing acts and omissions of Defendant constitute numerous

1 and multiple negligent violations of the TCPA, including but not limited to each
2 and every one of the above cited provisions of 47 U.S.C. § 227(b), and in particular
3 47 U.S.C. § 227 (b)(1)(A).

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

7 36. Plaintiff and the ATDS Class members are also entitled to and seek
8 injunctive relief prohibiting such conduct in the future.

9 **SECOND CAUSE OF ACTION**

10 **Knowing and/or Willful Violations of the**
11 **Telephone Consumer Protection Act**

12 **47 U.S.C. §227(b)**

13 **On Behalf of the ATDS Class**

14 37. Plaintiff repeats and incorporates by reference into this cause of action
15 the allegations set forth above at Paragraphs 1-32.

16 38. The foregoing acts and omissions of Defendant constitute numerous
17 and multiple knowing and/or willful violations of the TCPA, including but not
18 limited to each and every one of the above cited provisions of 47 U.S.C. § 227(b),
19 and in particular 47 U.S.C. § 227 (b)(1)(A).

20 39. As a result of Defendant’s knowing and/or willful violations of 47
21 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled an award of
22 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
23 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

24 40. Plaintiff and the Class members are also entitled to and seek injunctive
25 relief prohibiting such conduct in the future.

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THIRD CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(c)

On Behalf of the DNC Class

41. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-32.

42. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, and in particular *47 U.S.C. § 227 (c)(5)*.

43. As a result of Defendant’s negligent violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(c)(5)(B)*.

44. Plaintiff and the DNC Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

FOURTH CAUSE OF ACTION

Knowing and/or Willful Violations of the

Telephone Consumer Protection Act

47 U.S.C. §227 et seq.

On Behalf of the DNC Class

45. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-32.

46. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(c)*, in particular *47 U.S.C. § 227 (c)(5)*.

47. As a result of Defendant’s knowing and/or willful violations of *47 U.S.C. § 227(c)*, Plaintiff and the DNC Class members are entitled an award of

1 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
2 § 227(c)(5).

3 48. Plaintiff and the DNC Class members are also entitled to and seek
4 injunctive relief prohibiting such conduct in the future.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

7 **FIRST CAUSE OF ACTION**

8 **Negligent Violations of the Telephone Consumer Protection Act**

9 **47 U.S.C. §227(b)**

- 10 • As a result of Defendant’s negligent violations of 47 U.S.C.
- 11 §227(b)(1), Plaintiff and the ATDS Class members are entitled to and
- 12 request \$500 in statutory damages, for each and every violation,
- 13 pursuant to 47 U.S.C. 227(b)(3)(B).
- 14 • Any and all other relief that the Court deems just and proper.

15 **SECOND CAUSE OF ACTION**

16 **Knowing and/or Willful Violations of the**
17 **Telephone Consumer Protection Act**

18 **47 U.S.C. §227(b)**

- 19 • As a result of Defendant’s willful and/or knowing violations of 47
- 20 U.S.C. §227(b)(1), Plaintiff and the ATDS Class members are
- 21 entitled to and request treble damages, as provided by statute, up to
- 22 \$1,500, for each and every violation, pursuant to 47 U.S.C.
- 23 §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- 24 • Any and all other relief that the Court deems just and proper.

25 **THIRD CAUSE OF ACTION**

26 **Negligent Violations of the Telephone Consumer Protection Act**

27 **47 U.S.C. §227(c)**

- 28 • As a result of Defendant’s negligent violations of 47 U.S.C.

1 §227(c)(5), Plaintiff and the DNC Class members are entitled to and
2 request \$500 in statutory damages, for each and every violation,
3 pursuant to 47 U.S.C. 227(c)(5).

- 4 • Any and all other relief that the Court deems just and proper.

5 **FOURTH CAUSE OF ACTION**

6 **Knowing and/or Willful Violations of the**

7 **Telephone Consumer Protection Act**

8 **47 U.S.C. §227(c)**

- 9 • As a result of Defendant’s willful and/or knowing violations of 47
10 U.S.C. §227(c)(5), Plaintiff and the DNC Class members are entitled
11 to and request treble damages, as provided by statute, up to \$1,500,
12 for each and every violation, pursuant to 47 U.S.C. §227(c)(5).
- 13 • Any and all other relief that the Court deems just and proper.

14 49. Pursuant to the Seventh Amendment to the Constitution of the United
15 States of America, Plaintiff is entitled to, and demands, a trial by jury.

16 Respectfully Submitted this 17th Day of April, 2020.

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18 **LAW OFFICES OF TODD M. FRIEDMAN, P.C.**

19 By: /s/ Todd M. Friedman
20 Todd M. Friedman
21 Law Offices of Todd M. Friedman
22 Attorney for Plaintiff
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