

1 4. Venue is proper pursuant to 28 U.S.C. §1391 (b)(2).

2 **PARTIES**

3 5. Plaintiff is a natural person residing in Conroe, Texas 77301.

4 6. Plaintiff is a “person” as that term is defined by 47 U.S.C. §153(39).

5 7. Defendant is a business entity with a principal place of business, head office, or
6 otherwise valid mailing address at 1320 Main Street, 17th Floor, Columbia, South Carolina
7 29201.

8 8. Defendant is a “person” as that term is defined by 47 U.S.C. §153(39).

9 9. Defendant acted through its agents, employees, officers, members, directors,
10 heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

11 **FACTUAL ALLEGATIONS**

12 10. Defendant devised and implemented a campaign marketing strategy which
13 includes the transmission of text messages through use of an automatic telephone dialing
14 system.
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16 11. Plaintiff received multiple text messages from Defendant to her cellular
17 telephone XXX-XXX-5106.

18 12. Defendant did not obtain express consent from Plaintiff prior to sending the
19 Plaintiff the unsolicited text messages.

20 13. Plaintiff never provided her cellular telephone number to Defendant, has no
21 affiliation with Defendant, has never provided any donations to Defendant, and has not attended
22 any rallies organized by Defendant.

23 14. Plaintiff has been on the Do Not Call Registry since April 2005.
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1 15. These unsolicited text messages placed to Plaintiff's cellular telephone were
2 placed using an automated telephone dialing system (ATDS).

3 16. The text messages were not sent to Plaintiff for "emergency purposes."

4 17. The actions described herein were in violation of the TCPA.

5 **COUNT I**
6 **DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(b)**

7 18. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
8 at length herein.

9 19. The TCPA prohibits placing calls using an automatic telephone dialing system or
10 automatically generated or prerecorded voice to a cellular telephone except where the caller has
11 the prior express consent of the called party to make such calls or where the call is made for
12 emergency purposes. 47 U.S.C. § 227(b)(1)(A)(iii).

13 20. Federal Communications Commission (FCC) reasonably interpreted TCPA to
14 prohibit any call, including both voice and text call, using automatic telephone dialing system
15 (ATDS) or artificial or prerecorded message to any wireless telephone number, and thus, "call"
16 within meaning of TCPA included text message to consumers' cellular telephones by publisher
17 and mobile marketing firm to advertise publication of novel. Telephone Consumer Protection
18 Act of 1991, § 3(a), 47 U.S.C.A. § 227(b)(1)(A)(iii). Satterfield v. Simon & Schuster, Inc., 569
19 F.3d 946 (9th Cir. 2009).

20 21. Defendant initiated multiple text messages to Plaintiff's cellular telephone
21 number using an automatic telephone dialing system.

22 22. The dialing system used by Defendant to call Plaintiff's cellular telephone calls
23 telephone numbers without being prompted by human intervention before each call.
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1 23. The dialing system used by Defendant to call Plaintiff has the present and/or
2 future capacity to dial numbers in a random and/or sequential fashion.

3 24. Defendant's text messages were not made for "emergency purposes."

4 25. Defendant's text messages to Plaintiff's cellular telephone were without any
5 prior express consent.

6 26. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do
7 Not Call Registry since April of 2005.

8 27. Defendant's acts as described above were done with malicious, intentional,
9 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
10 purpose of harassing Plaintiff.

11 28. The acts and/or omissions of Defendant were done unfairly, unlawfully,
12 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
13 defense, legal justification or legal excuse.

14 29. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
15 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
16 damages.
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19 **COUNT II**
20 **DEFENDANT VIOLATED THE TCPA 47 U.S.C. § 227(c)**

21 30. Plaintiff incorporates the forgoing paragraphs as though the same were set forth
22 at length herein.

23 31. The TCPA prohibits any person or entity of initiating any telephone solicitation
24 to a residential telephone subscriber who has registered their telephone number on the National
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1 Do-Not-Call Registry of persons who do not wish to receive telephone solicitations that is
2 maintained by the Federal Government. 47 U.S.C. § 227(c).

3 32. Defendant contacted Plaintiff despite the fact that Plaintiff has been on the Do
4 Not Call Registry since April of 2005.

5 33. Defendant texted Plaintiff on one or more occasions during a single calendar
6 year despite Plaintiff's registration on the Do Not Call list.

7 34. Defendant's acts as described above were done with malicious, intentional,
8 willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law and with the
9 purpose of harassing Plaintiff.

10 35. The acts and/or omissions of Defendant were done unfairly, unlawfully,
11 intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal
12 defense, legal justification or legal excuse.

13 36. As a result of the above violations of the TCPA, Plaintiff has suffered the losses
14 and damages as set forth above entitling Plaintiff to an award of statutory, actual and trebles
15 damages.
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19 WHEREFORE, Plaintiff, RHONDA CLIFFORD, respectfully prays for judgment as
20 follows:

- 21 a. All actual damages Plaintiff suffered (as provided under 47 U.S.C. §
22 227(b)(3)(A));
23 b. Statutory damages of \$500.00 per text/call (as provided under 47 U.S.C.
24 § 227(b)(3)(B));
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- c. Additional statutory damages of \$500.00 per text/call (as provided under 47 U.S.C. §227(c));
- d. Treble damages of \$1,500.00 per text/call (as provided under 47 U.S.C. § 227(b)(3));
- e. Additional treble damages of \$1,500.00 per text/call (as provided under 47 U.S.C. § 227(c));
- f. Injunctive relief (as provided under 47 U.S.C. § 227(b)(3) and (c)); and
- g. Any other relief this Honorable Court deems appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, RHONDA CLIFFORD, demands a jury trial in this case.

Respectfully submitted,

Dated: 03/16/2021

By: /s/ Amy L. B. Ginsburg
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