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13 **UNITED STATES DISTRICT COURT**
 14 **CENTRAL DISTRICT OF CALIFORNIA**

15 **TERRY FABRICANT**, individually
 16 and on behalf of all others similarly
 17 situated,

18 Plaintiffs,

19 v.

20 **GE UNITED TECHNOLOGIES,**
 21 **LLC DBA GRASSDOOR.COM;**

22 Defendant.

23 **Case No.: 2:22-cv-283**

24 **CLASS ACTION**

25 **COMPLAINT FOR DAMAGES**
 26 **AND INJUNCTIVE RELIEF**
 27 **PURSUANT TO THE**
 28 **TELEPHONE CONSUMER**
PROTECTION ACT, 47 U.S.C. §
227, ET SEQ.

JURY TRIAL DEMANDED

INTRODUCTION

1. TERRY FABRICANT (“Plaintiff”), brings this Class Action Complaint for damages, injunctive relief, and any other available legal or GE UNITED TECHNOLOGIES, LLC (“Defendant”), in negligently contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”) and related regulations, specifically the National Do-Not-Call provisions, thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his

1 own acts and experiences, and, as to all other matters, upon information and belief,
2 including investigation conducted by his attorneys.

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

8 3. In enacting the TCPA, Congress intended to give consumers a choice
9 as to how creditors and telemarketers may call them, and made specific findings
10 that “[t]echnologies that might allow consumers to avoid receiving such calls and
11 messages are not universally available, are costly, are unlikely to be enforced, or
12 place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11.
13 Toward this end, Congress found that

14
15 [b]anning such automated or prerecorded telephone calls to the home,
16 except when the receiving party consents to receiving the call or when
17 such calls are necessary in an emergency situation affecting the health
18 and safety of the consumer, is the only effective means of protecting
telephone consumers from this nuisance and privacy invasion.

19 *Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL
20 3292838, at* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA’s
21 purpose).

22 4. Congress also specifically found that “the evidence presented to the
23 Congress indicates that automated or prerecorded calls are a nuisance and an
24 invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also,
25 *Mims*, 132 S. Ct. at 744.

26 5. In a recent decision, the Supreme Court interpreted the term
27 “automatic telephone dialing system” and held that “[t]o qualify as an ‘automatic
28 telephone dialing system,’ a device must have the capacity either to store a

1 telephone number using a random or sequential generator *or* to produce a telephone
2 number using a random or sequential number generator.” *Facebook, Inc. v. Duguid*,
3 141 S.Ct. 1163 (2021) (emphasis added).

4 6. In *Duguid*, the Supreme Court provided an example of such systems,
5 stating: “For instance, an autodialer might use a random number generator to
6 determine the order in which to pick phone numbers from a preproduced list. It
7 would then store those numbers to be dialed at a later time.” *Id.* at 1171-72 fn. 7.

8 7. Further, both *Duguid* and the legislative history of the TCPA are clear
9 that the original focus on prerecorded voice technology prohibition was the fact
10 that such communications involved agentless calls, not on the question of whether
11 a literal voice was used during those agentless calls. *See* Hearing Before the
12 Subcommittee on Communications of the Committee on Commerce, Science and
13 Transportation, United States Senate One Hundred Second Congress First Session
14 July 24, 1992, Testimony of Robert Bulmash and Steve Hamm at pg 11; 7 FCC
15 Rcd. 8752 (F.C.C. September 17, 1992).

16 8. The Sixth Circuit has also recognized this distinction: “Congress drew
17 an explicit distinction between ‘automated telephone calls that deliver an artificial
18 or prerecorded voice message’ on the one hand and ‘calls place by ‘live’ persons’
19 on the other.” *Ashland Hosp. Corp. v. Serv. Employees Int’l Union, Dist. 1199*
20 *WV/KY/OH*, 708 F.3d 737,743 (6th Cir. 2013).

21 9. Similarly, the FTC has observed that “prerecorded calls are by their
22 very nature one-sided conversations, and if there is no opportunity for consumers
23 to ask questions, offers may not be sufficiently clear for consumers to make
24 informed choices before pressing a button or saying yes to make a purchase.” 73
25 FR 51164-01, 51167 (Aug. 29, 2008).

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1 **JURISDICTION AND VENUE**

2 10. Jurisdiction is proper under 28 U.S.C. § 1331 because this action arises
3 under a Federal statute, namely the Telephone Consumer Protection Act, 47 U.S.C.
4 § 277, *et seq.*

5 11. Venue is proper in the United States District Court for the Central
6 District of California pursuant to 18 U.S.C. § 1391(b) because Defendant does
7 business in California and Plaintiff resides within this District.

8 **PARTIES**

9 12. Plaintiff is, and at all times mentioned herein, was a citizen and
10 resident of the State of California. Plaintiff is, and at all times mentioned herein
11 was, a “person” as defined by 47 U.S.C. § 153 (39). Plaintiff was physically in
12 California at the time he received the alleged text messages from Defendant.

13 13. Plaintiff is informed and believes, and thereon alleges, that Defendant
14 is a limited liability company of the state of Delaware. Defendant, and all of its
15 agents, are and at all times mentioned herein were “persons,” as defined by 47
16 U.S.C. § 153 (39). Plaintiff alleges that at all times relevant herein Defendant
17 conducted business in the State of California and in the County of Los Angeles,
18 and within this judicial district.

19 **FACTUAL ALLEGATIONS**

20 14. At all times relevant, Plaintiff was a citizen of Los Angeles County,
21 and a citizen of the State of California. Plaintiff is, and at all times mentioned
22 herein was a “person” as defined by 47 U.S.C. § 153 (39).

23 15. Defendant is, and at all times mentioned herein was, a “person,” as
24 defined by 47 U.S.C. § 153 (39).

25 16. At all times relevant Defendant conducted business in the State of
26 California and in the County of Los Angeles, within this judicial district.

27 17. On or about June 4, 2021, Plaintiff received a text message from
28 Defendant on his cellular telephone number ending in -3170.

1 18. During this time, Defendant began to use Plaintiff's cellular
2 telephones for the purpose of sending Plaintiff spam advertisements and/or
3 promotional offers, via text messages, including a second text message sent on
4 August 25, 2021.

5 19. Plaintiff started receiving frequent text messages from Defendant that
6 sought to solicit discounts and other associated promotions.

7 20. Plaintiff is not, and has never been, a customer of Defendant, and
8 therefore Defendant did not have Plaintiff's prior express consent.

9 21. Based on the content and format of these text messages, Plaintiff
10 alleges that they were sent via Defendant's SMS Blasting Platform, i.e., an
11 "automatic telephone dialing system," ("ATDS") as defined by 47 U.S.C. § 227
12 (a)(1) as prohibited by 47 U.S.C. § 227 (b)(1)(A).

13 22. The text message sent to Plaintiff's cellular telephone was not sent by
14 a live agent and thus created a one-sided conversation in which Plaintiff could not
15 receive a response to her questions and/or concerns. The text message also was sent
16 in an automated fashion as a result of computerized campaigns that were pre-
17 programmed in advance to send messages out to large groups of consumers all at
18 once, either sequentially or via algorithmic dialing, i.e. in an automated fashion by
19 a computer.

20 23. In Merriam Webster's Dictionary, "voice" is defined as "an
21 instrument or medium of expression." It defines "artificial" as "humanly
22 contrived...often on a natural model : MAN-MADE" and "lacking in natural or
23 spontaneous quality."

24 24. The messages sent to Plaintiff by Defendant using the SMS blasting
25 platform employed a text message as an instrument or medium of expression to
26 deliver an automatic message drafted in advance of being sent, i.e. that of an SMS
27 message, to convey a telemarketing communication to Plaintiff. SMS blasting
28

1 platforms are man-made humanly contrived programs which allow companies to
2 blast out such messages via non-spontaneous methods, i.e. automated methods
3 similar to that of an assembly line in a factory. Such SMS blasting devices are
4 incapable of spontaneity, as they must be programmed by the operator to
5 automatically send messages out, *en masse*, pursuant to preprogrammed
6 parameters.

7 25. Accordingly, Defendant's messages utilized an "artificial voice" as
8 prohibited by 47 U.S.C. § 227(b)(1)(A).

9 26. In Merriam Webster's Dictionary, "prerecorded" is defined as
10 "recorded in advance." "Recorded" is defined as "to set down in writing." The
11 text message sent to Plaintiff's cellular telephone via an SMS blasting platform was
12 set down in writing in advance by Defendant, whose employees wrote out the
13 standard automated messages that were to be sent to Plaintiff and other class
14 members, and by way of preprogrammed SMS blasting, entered the prerecorded
15 message into the SMS Blasting platform, and thereafter sent these messages
16 pursuant to scheduled blasts that were programmed by Defendant. Thus, Defendant
17 employed a text message as an instrument or medium of expression to deliver a
18 prerecorded message drafted in advance of being sent.

19 27. Thus, Defendant's messages utilized a "prerecorded voice" as
20 prohibited by 47 U.S.C. § 227(b)(1)(A).

21 28. The telephone number that Defendant, or their agent texted were
22 assigned to a cellular telephone service for which Plaintiff incur charges for
23 incoming texts pursuant to 47 U.S.C. § 227 (b)(1).

24 29. These text messages constituted calls that were not for emergency
25 purposes as defined by 47 U.S.C. § 227 (b)(1)(A)(i).

26 30. Plaintiff was never a customer of Defendant and never provided his
27 cellular telephone number to Defendant for any reason whatsoever. Accordingly,
28

1 Defendant and their agents never received Plaintiff's prior express consent to
2 receive unsolicited text messages, pursuant to 47 U.S.C. § 227 (b)(1)(A).

3 31. Further, Plaintiff's cellular telephone number ending in -3170 had
4 been on the National Do-Not-Call Registry well over thirty (30) days prior to
5 Defendant's initial text message.

6 32. Defendant sent multiple text messages soliciting its business to
7 Plaintiff on his cellular telephone ending in -3170 in or around April 2020.

8 33. Such text messages constitute solicitation calls pursuant to 47 C.F.R.
9 § 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

10 34. Plaintiff received at least two text messages from Defendant within a
11 12-month period.

12 35. Upon information and belief, and based on Plaintiff's experience of
13 being messages by Defendant after being on the National Do-Not-Call list for
14 months prior to Defendant's initial calls, and at all relevant times, Defendant failed
15 to establish and implement reasonable practices and procedures to effectively
16 prevent telephone solicitations in violation of the regulations prescribed under 47
17 U.S.C. § 227(c)(5).

18 36. These text messages by Defendant, or its agents, violated 47 U.S.C. §
19 227(b)(1) and 47 U.S.C. § 227(c).

20 **CLASS ACTION ALLEGATIONS**

21 37. Plaintiff brings this action on behalf of herself and on behalf of and all
22 others similarly situated, as a member of the two proposed Classes (together, the
23 "Classes").

24 38. Plaintiff represents, and is a member of, the ATDS Class ("ATDS
25 Class"), defined as follows: all persons within the United States who received any
26 unsolicited text messages sent using an ATDS or an artificial or prerecorded voice
27 from Defendant, which text message was not made for emergency purposes or with
28

1 the recipient's prior express consent within the four years prior to the filing of the
2 Complaint through the date of class certification.

3 39. Plaintiff represents, and is a member of, the DNC Class ("DNC
4 Class"), defined as follows: all persons within the United States registered on the
5 National Do-Not-Call Registry for at least 30 days, who had not granted Defendant
6 prior express consent nor had a prior established business relationship, who
7 received more than one text message sent by or on behalf of Defendant that
8 promoted Defendant's products or services, within any twelve-month period,
9 within four years prior to the filing of the Complaint through the date of class
10 certification.

11 40. Defendant and their employees or agents are excluded from the
12 Classes. Plaintiff does not know the number of members in the Classes, but
13 believes the Class members number in the hundreds of thousands, if not more.
14 Thus, this matter should be certified as a Class action to assist in the expeditious
15 litigation of this matter.

16 41. This suit seeks only damages and injunctive relief for recovery of
17 economic injury on behalf of the Class, and it expressly is not intended to request
18 any recovery for personal injury and claims related thereto. Plaintiff reserves the
19 right to expand the Class definition to seek recovery on behalf of additional persons
20 as warranted as facts are learned in further investigation and discovery.

21 42. The joinder of the Class members is impractical and the disposition of
22 their claims in the Class action will provide substantial benefits both to the parties
23 and to the court. The Class can be identified through Defendant's records or
24 Defendant's agents' records.

25 43. Plaintiff and members of the ATDS Class were harmed by the acts of
26 Defendant in at least the following ways: Defendant, either directly or through their
27 agents, illegally contacted Plaintiff and the ATDS Class members via their cellular
28 telephones by using marketing and text messages, thereby causing Plaintiff and the

1 ATDS Class members to incur certain cellular telephone charges or reduce cellular
2 telephone time for which Plaintiff and the ATDS Class members previously paid,
3 and invading the privacy of said Plaintiff and the ATDS Class members. Plaintiff
4 and the ATDS Class members were damaged thereby.

5 44. There is a well-defined community of interest in the questions of law
6 and fact involved affecting the ATDS Class members. The questions of law and
7 fact common to the ATDS Class predominate over questions which may affect
8 individual ATDS Class members, including the following:

- 9
- 10 a) Whether, within the four years prior to the filing of this Complaint
11 through the date of class certification, Defendant or their agents sent
12 any text messages (other than a message made for emergency
13 purposes or made with the prior express consent of the called party)
14 to an ATDS Class member using any automatic dialing system or
15 artificial or prerecorded voice to any telephone number assigned to a
16 cellular phone 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 and their agents should be enjoined from
20 engaging in such conduct in the future.

21 45. As a person that received at least one solicitation text message without
22 Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of the
23 ATDS Class. Plaintiff will fairly and adequately represent and protect the interests
24 of the ATDS Class in that Plaintiff has no interests antagonistic to any member of
25 the ATDS Class.

26 46. Plaintiff and members of the DNC Class were harmed by the acts of
27 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
28 and the DNC Class members via their cellular telephones for solicitation purposes,
thereby invading the privacy of Plaintiff and the DNC Class members whose
telephone numbers were on the National Do-Not-Call Registry. Plaintiff and the
DNC Class members were damaged thereby.

1 47. There is a well-defined community of interest in the questions of law
2 and fact involved affecting the DNC Class members. The questions of law and fact
3 common to the DNC Class predominate over questions which may affect individual
4 DNC Class members, including the following:

- 5 a. Whether, within four years prior to the filing of this complaint through
6 the date of class certification, Defendant or its agents sent more than
7 one solicitation text to the members of the DNC Class whose
8 telephone numbers were on the National Do-Not-Call Registry for
9 over thirty days and who had not granted prior express consent to
10 Defendant and did not have an established business relationship with
11 Defendant;
- 12 b. Whether Defendant obtained prior express written consent to send
13 solicitation texts to Plaintiff's or the DNC Class members' telephones;
- 14 c. Whether Plaintiff and the DNC Class members were damaged
15 thereby, and the extent of damages for such violation; and
- 16 d. Whether Defendant and its agents should be enjoined from engaging
17 in such conduct in the future.

18 48. Plaintiff and the members of the Classes have all suffered irreparable
19 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class
20 action, the Classes will continue to face the potential for irreparable harm. In
21 addition, these violations of law will be allowed to proceed without remedy and
22 Defendant will likely continue such illegal conduct. Because of the size of the
23 individual member's claims, few, if any, members of these Classes could afford to
24 seek legal redress for the wrongs complained of herein.

25 49. Plaintiff has retained counsel experienced in handling class action
26 claims and claims involving violations of the Telephone Consumer Protection Act.

27 50. A class action is a superior method for the fair and efficient
28 adjudication of this controversy. Class-wide damages are essential to induce

1 Defendant to comply with federal and California law. The interest of the Classes'
2 members in individually controlling the prosecution of separate claims against
3 Defendant are small because the maximum statutory damages in an individual
4 action for violation of privacy are minimal. Management of these claims is likely
5 to present significantly fewer difficulties than those presented in many class claims.

6 51. Defendant has acted on grounds generally applicable to the Classes,
7 thereby making appropriate final injunctive relief and corresponding declaratory
8 relief with respect to the Classes as a whole.

9 **FIRST CAUSE OF ACTION**
10 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
11 **47 U.S.C. § 227(B)**
12 **ON BEHALF OF THE ATDS CLASS**

13 52. Plaintiff incorporates by reference all of the above paragraphs of this
14 Complaint as though fully stated herein.

15 53. The foregoing acts and omissions of Defendant constitute numerous
16 and multiple negligent violations of the TCPA, including but not limited to each
17 and every one of the above-cited provisions of 47 U.S.C. § 227(b).

18 54. As a result of Defendant's negligent violations of 47 U.S.C. § 227(b),
19 Plaintiff and the ATDS Class members are entitled to an award of \$500.00 in
20 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
21 227(b)(3)(B).

22 55. Plaintiff and the ATDS Class members are also entitled to and seek
23 injunctive relief prohibiting such conduct in the future.

24 **SECOND CAUSE OF ACTION**
25 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**
26 **TELEPHONE CONSUMER PROTECTION ACT**
27 **47 U.S.C. § 227(B)**
28 **ON BEHALF OF THE ATDS CLASS**

56. Plaintiff incorporates by reference all of the above paragraphs of this
Complaint as though fully stated herein.

1 57. The foregoing acts and omissions of Defendant constitute numerous
2 and multiple knowing and/or willful violations of the TCPA, including but not
3 limited to each and every one of the above-cited provisions of 47 U.S.C. § 227(b).

4 58. As a result of Defendant's knowing and/or willful violations of 47
5 U.S.C. § 227(b), Plaintiff and the ATDS Class members are entitled to an award of
6 \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C.
7 § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

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

10
11 **THIRD CAUSE OF ACTION**
12 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**
13 **47 U.S.C. § 227(c)**
14 **ON BEHALF OF THE DNC CLASS**

15 60. Plaintiff incorporates by reference all of the above paragraphs of this
16 Complaint as though fully stated herein.

17 61. The foregoing acts and omissions of Defendant constitute numerous
18 and multiple negligent violations of the TCPA, including but not limited to each
19 and every one of the above cited provisions of 47 U.S.C. § 227(c), and in particular
20 47 U.S.C. § 227(c)(5).

21 62. As a result of Defendant's negligent violations of 47 U.S.C. § 227(c),
22 Plaintiff and the DNC Class members are entitled to an award of \$500.00 in
23 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
24 227(c)(5)(B).

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

27 **FOURTH CAUSE OF ACTION**
28 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER**
PROTECTION ACT
47 U.S.C. § 227(c)

ON BEHALF OF THE DNC CLASS

64. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

65. 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), and in particular 47 U.S.C. § 227(c)(5).

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

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

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, and members of the Classes, the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF THE TCPA, 47 U.S.C. § 227(B)

- As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each ATDS Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF THE TCPA, 47 U.S.C. § 227(B)

- As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each ATDS Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

- Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**THIRD CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF
THE TCPA, 47 U.S.C. § 227(c)**

- As a result of Defendant’s negligent violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for herself and each DNC Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

**FOURTH CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATION OF
THE TCPA, 47 U.S.C. § 227(c)**

- As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227(c)(5), Plaintiff seeks for herself and each DNC Class member \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(c)(5)(B).
- Pursuant to 47 U.S.C. § 227(c)(5)(A), injunctive relief prohibiting such conduct in the future.
- Any other relief the Court may deem just and proper.

TRIAL BY JURY

68. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: January 13, 2022

Respectfully submitted,

THE LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: s/ Todd M. Friedman
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