

IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA

(1) TERESA BROWN, individually and on  
behalf of all others similarly situated,

*Plaintiff,*

v.

(1) OFFICE DEPOT, INC.,

*Defendant.*

Case No. 23-CV-287-TCK-JFJ

(From the District Court of Tulsa County,  
Oklahoma, Case No. CJ-2023-01841)

**NOTICE OF REMOVAL**

Defendant Office Depot, Inc. (“Office Depot”), pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, and the Class Action Fairness Act (“CAFA”), hereby provides notice that it removes this cause from the District Court in and for Tulsa County to the United States District Court of the North District of Oklahoma. In support of this Notice of Removal, Office Depot respectfully states as follows:

**I.**  
**INTRODUCTION**<sup>1</sup>

1. Plaintiff Teresa Brown (“Plaintiff”) initiated a civil action in the District Court of Tulsa County, State of Oklahoma, styled *Teresa Brown, individually and on behalf of all others similarly situated v. Office Depot, Inc.*, Cause No. CJ-2023-01841 (the “State Court Action”).

2. The sole claim advanced in Plaintiff’s Petition (“Petition”) is Office Depot’s alleged violation of the Oklahoma Telephone Solicitation Act, Okla. Stat. tit. 15, § 775C.1, *et seq.*

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<sup>1</sup> Pursuant to 28 U.S.C. § 1446(a), this Notice of Removal provides a short and plain statement of the grounds for removal. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81 (2014). As explained by the Supreme Court, such notices need only include plausible allegations that the jurisdictional requirements are met; evidence supporting the allegations is required only if the plaintiff contests or the Court questions the allegations. *Id.* at 89.

(“OTSA”).<sup>2</sup> Plaintiff seeks injunctive relief, statutory damages, attorneys’ fees and costs, and class certification. *See* Petition, a copy of which is contained in **Exhibit A** hereto, at Prayer for Relief. Plaintiff generally alleges that Office Depot violated OTSA by sending automated commercial telephonic sales calls, in the form of text messages, to Plaintiff’s cellular telephone without her prior express written consent, and that Office Depot similarly did so with respect to numerous other individuals across Oklahoma. *See* Petition ¶¶ 1, 13-20.

3. The putative class that Plaintiff seeks to represent is composed of and defined as follows: “All persons who, at any time since November 1, 2022, received, at a telephone number assigned an Oklahoma area code, a commercial telephonic sales call made by or on behalf of [Office Depot] using the same type of equipment used to make commercial telephonic sales calls to Plaintiff.” *See* Petition ¶ 21.

4. As detailed in Section III, below, this Court has original jurisdiction over this action pursuant to CAFA, 28 U.S.C. § 1332(d).

## **II.** **PROCEDURAL REQUIREMENTS**

5. All procedural requirements related to the removal of this action have been satisfied.

### **A. Timely Removal**

6. A notice of removal is timely if filed within thirty (30) days after service of the complaint. 28 U.S.C. § 1446; *see Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 356 (1999).

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<sup>2</sup> For the purposes of this Notice of Removal only, Office Depot assumes the truth of the allegations and cause of action set forth in the Petition. Office Depot denies that it has any liability to Plaintiff or the class she seeks to represent, and denies that Plaintiff or the putative class members are entitled to recover the relief requested.

7. Plaintiff's Petition was filed on May 24, 2023. Office Depot's registered agent was served with a copy of the summons and Petition on June 13, 2023. This removal is timely because it was filed within 30 days of the date on which Office Depot was served.

**B. Venue**

8. Under 28 U.S.C. § 1441(a), the State Court Action is properly removed to this Court, the United States District Court for the Northern District of Oklahoma, as the district embracing the county where the State Court Action is pending.

**C. Notice of Filing**

9. In accordance with 28 U.S.C. § 1446(d), Office Depot will serve a copy of this Notice of Removal on counsel for Plaintiff, and will file a copy hereof with the clerk of the District Court of Tulsa County, Oklahoma, where the State Court Action is pending.

**D. 28 U.S.C. § 1446(a) and Local Civil Rule 81.2 Procedural Requirements**

10. Pursuant to 28 U.S.C. § 1446(a) and Local Civil Rule 81.2, a clearly legible copy of the Petition is attached to this Notice as **Exhibit A**, and copies of all other documents filed or served in the State Court Action, as well as the docket sheet of the State Court Action, are attached to this Notice as **Exhibit B**.

11. The only motion pending in the State Court Action is a Motion to Associate Counsel, filed on June 9, 2023, as it relates to Frank Hedin.

**III.  
THIS COURT HAS JURISDICTION UNDER CAFA**

12. Removal is proper because the Court has jurisdiction over Plaintiff's claims under CAFA, 28 U.S.C. § 1332(d)(2).

13. Under CAFA, the district court has original jurisdiction of any civil action in which (1) there is minimal diversity, in that any member of a putative class of plaintiffs is a citizen of a

state different from any defendant, (2) there are at least 100 members in all proposed plaintiff classes combined, (3) the aggregate amount in controversy exceeds the sum or value of \$5,000,000 and (4) no CAFA exception applies. *See* 28 U.S.C. § 1332(d).

14. Unlike traditional removals, “[n]o antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Dart Cherokee*, 574 U.S. at 89.

**A. There is Minimal Diversity of Citizenship.**

15. There is minimal diversity of citizenship. Minimal diversity exists when “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

16. For CAFA removal purposes, Office Depot is a citizen of the state of its incorporation and the state where its principal place of business is located. *See* 28 U.S.C. § 1332(c)(1).

17. Office Depot is incorporated in Delaware, and maintains its corporate headquarters and principal place of business in Boca Raton, Florida.

18. Plaintiff alleges that she is a “resident and citizen” of Oklahoma. Petition ¶ 4.

19. Therefore, there is minimum diversity of citizenship among the parties.

**B. The Proposed Class Exceeds 100 Members.**

20. This action also satisfies the definition of a “class action” under CAFA, 28 U.S.C. § 1332(d)(1)(B), which is “any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action.”

21. To remove a class action under CAFA, “the number of members of all proposed plaintiff classes in the aggregate” must be at least 100. 28 U.S.C. § 1332(d)(5)(B).

22. Plaintiff seeks to represent more than 100 members, as the Petition alleges that she believes the “number of persons within the Class is substantial, believed to amount to at least several thousand persons dispersed throughout Oklahoma[.]” Petition ¶ 28. Therefore, the proposed class exceeds 100 members.

**C. The Amount in Controversy Exceeds \$5,000,000.**

23. To establish jurisdiction under CAFA, the amount in controversy must exceed \$5,000,000. *See* 28 U.S.C. § 1332(d).<sup>3</sup> Unlike traditional diversity jurisdiction, the amount in controversy under CAFA is determined by aggregating the claims of putative class members. *See* 28 U.S.C. § 1332 (“In any class action, the claims of the individual class members *shall be aggregated* to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs”) (emphasis added). Further, CAFA’s amount in controversy “provisions should be read broadly, with a strong preference that interstate class actions should be heard in a federal court if properly removed by any defendant.” *Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1262 (10th Cir. 2014) (quoting S.Rep. No. 109–14, at 43 (2005)).

24. The amount in controversy at this stage is not “what damages the plaintiff will likely prove but what a factfinder might conceivably lawfully award.” *Hammond v. Stamps.com, Inc.*, 844 F.3d 909, 912 (10th Cir. 2016). Thus, the amount in controversy test requires a party seeking federal jurisdiction “to show only ... that a fact finder *might* legally conclude that damages

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<sup>3</sup> Office Depot contests the allegations in the Petition, but for purposes of meeting its burden in establishing the amount in controversy, assumes, consistent with these authorities, total victory by Plaintiff as sought in the Petition.

exceed the statutory amount,” such that, “to justify [remand] under this standard it must appear to a legal certainty that the claim is really for less than the jurisdictional amount.” *Id.* at 911-912 (internal citations and quotations omitted, emphasis in original).

25. As the Supreme Court explained in *Dart Cherokee*, the “defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional” amount in controversy threshold. 574 U.S. at 89; *McCracken v. Progressive Direct Ins. Co.*, 896 F.3d 1166, 1170, n.5 (10th Cir. 2018) (same). Moreover, in assessing CAFA removal allegations, courts “should ‘apply the same liberal rules that are applied to other matters of pleading’.” *Dart Cherokee*, 574 U.S. at 87 (quoting H. R. Rep. No. 100-889, p. 71 (1988)). Thus, where, as here, Plaintiff does not allege a specific amount in controversy in the Petition, the defendant may meet its burden to demonstrate the jurisdictional amount through estimates of the potential damages that could be awarded based on the Petition’s allegations. *See Hammond*, 844 F.3d at 912.<sup>4</sup>

26. In this case, Plaintiff seeks to recover, for herself and on behalf of the putative class, statutory damages, and attorneys’ fees and costs. *See* Petition ¶ 45. Specifically, Plaintiff seeks an award of “\$500.00 in statutory damages for each violation of the OTSA committed by or on behalf of Defendant” (pursuant to Okla. Stat. tit. 15, § 775C.6(A)(2)) “or \$1,500 for each such violation committed willfully or knowingly” (pursuant to Okla. Stat. tit. 15, 775C.6(B)). Petition ¶¶ 32, 45, Prayer for Relief Para. B. Plaintiff further alleges that, during the asserted class period,

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<sup>4</sup> As the Supreme Court explained in *Dart Cherokee*, under CAFA, removing defendants “need not prove that the amount in controversy requirement has been met,” but, “rather, . . . may simply allege or assert that the jurisdictional threshold has been met,”; and, only if “the plaintiff contests” that allegation must the district court then be presented with evidence on the issue and “make findings of jurisdictional fact [regarding the amount in controversy] to which the preponderance standard applies.” *Dart Cherokee*, at 88-89, quoting H.R.Rep. No. 112-10, p. 16; *see also Potts v. Westside Chrysler Jeep Dodge LLC*, 2021 WL 4129626, at \*2 (W.D. Okla. Sept. 9, 2021).

putative class members “collectively received at least tens of thousands of commercial telephonic sales calls by or on behalf of Defendant.” *See* Petition ¶ 28.

27. Therefore, based on potential statutory damages awards of \$500 per text (or \$1,500 per text if determined to constitute a knowing or willful violation of the OTSA), and Plaintiff’s allegation of at least 10,000 unlawful texts sent to putative class members, the amount in controversy exceeds CAFA’s \$5 million threshold and is potentially \$15 million or more, based on Plaintiff’s allegation of knowing or willful violations of the OTSA. *See Hammond*, 844 F.3d at 911-912 (holding that, where plaintiff sought up to \$300 per class member in statutory damages on behalf of a putative class that could be as large as 312,000 individuals, the amount in controversy for purposes of CAFA jurisdiction was satisfied “as a matter of law” because there was “a legal possibility” that the action could result in an award in excess of \$5 million.) Accordingly, removal of the action to this Court pursuant to CAFA is proper. *See id.* at 912 (concluding that “[o]nce the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5 million ... the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.” (internal citation omitted)).

**D. No CAFA Exceptions Apply.**

28. Although Plaintiff bears the burden of proof for establishing the application of a CAFA exception, neither the “local controversy” (28 U.S.C. § 1332(d)(4)(A)) nor the “home state” (28 U.S.C. § 1332(d)(4)(B)) exceptions to CAFA jurisdiction can apply here because Office Depot is not a citizen of Oklahoma.

28. As such, no exceptions apply that would defeat CAFA jurisdiction.

**IV.**  
**RESERVATION OF RIGHTS**

29. If Plaintiff moves to remand this case, or if the Court addresses remand *sua sponte*, Office Depot respectfully requests an opportunity to submit such additional argument or evidence in support of removal as may be necessary. By filing this Notice of Removal, Office Depot specifically reserves the right to assert any defenses and/or objections to which they may be entitled.

**V.**  
**CONCLUSION**

30. Office Depot therefore removes to this Court the case styled *Teresa Brown, individually and on behalf of all others similarly situated v. Office Depot, Inc.*, Cause No. CJ-2023-01841, filed in the District Court of Tulsa County, State of Oklahoma. Office Depot respectfully requests that this Court assume jurisdiction over this action as if it had been originally filed here, and that all further proceedings in the State Court Action be stayed.



DATED: July 12, 2023

Respectfully submitted,

**GABLE GOTWALS**

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**COUNSEL FOR DEFENDANT  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 12, 2023, a copy of the above and foregoing document was mailed, postage prepaid, and by electronic mail to the following counsel of record:

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*s/ Justin A. Lollman*  
\_\_\_\_\_  
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# EXHIBIT A

IN THE DISTRICT COURT OF TULSA COUNTY  
STATE OF OKLAHOMA

DISTRICT COURT  
**FILED**

MAY 24 2023

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

TERESA BROWN, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

OFFICE DEPOT, INC.,

Defendant.

Case No.

**CJ-2023-01841**

CLASS ACTION

**TRACY L. PRIDDY**  
(JURY TRIAL DEMANDED)

**CLASS ACTION PETITION**

Plaintiff Teresa Brown, individually and on behalf of all others similarly situated, complains and alleges as follows based on personal knowledge as to herself, on the investigation of her counsel, and on information and belief as to all other matters.

**NATURE OF ACTION**

1. Plaintiff brings this Class Action Complaint for legal and equitable remedies resulting from the illegal actions of Office Depot, Inc. ("Defendant") in sending automated commercial telephonic sales calls, in the form of text messages, to her cellular telephone and the cellular telephones of numerous other individuals across Oklahoma, in clear violation of Oklahoma's Telephone Solicitation Act, Okla. Stat. tit. 15, § 775C.1, *et seq.* ("OTSA").

**JURISDICTION AND VENUE**

2. The Court has jurisdiction over this case. *See* Okla. Const. art. VII, § 7(c) (establishing that Oklahoma's district courts are courts of general jurisdiction).

3. Personal jurisdiction and venue are proper because Plaintiff resides within Tulsa County, Oklahoma, because Defendant engaged in a telemarketing campaign through which it knowingly and intentionally directed numerous OTSA-violative text messages (which form the basis of Plaintiff's claims) into Tulsa County, Oklahoma, including while she resided in Tulsa County, Oklahoma, such that a substantial portion of the events alleged herein occurred, and the cause of action arose, within Tulsa County, Oklahoma. *See Okla. Stat. tit. 12, §§ 133.*

#### **PARTIES**

4. Plaintiff is a resident and citizen of Tulsa County, Oklahoma. Plaintiff was at all times mentioned herein the regular user of the telephone number (918) \*\*\*-2058 (the "2058 Number").

5. Defendant Office Depot, Inc. is a provider of business services and supplies. Defendant is organized and incorporated under the laws of Delaware and maintains its corporate headquarters and principal place of business in Boca Raton, Florida.

#### **OKLAHOMA'S TELEPHONE SOLICITATION ACT OF 2022**

6. "Americans passionately disagree about many things. But they are largely united in their disdain for robocalls. The Federal Government receives a staggering number of complaints about robocalls—3.7 million complaints in 2019 alone. The States likewise field a constant barrage of complaints." *Barr v. Am. Ass'n of Political Consultants*, 140 S. Ct. 2335, 2343 (2020).

7. Thus, on May 20, 2022, to better protect its residents' privacy from intrusive calls and text messages, Oklahoma enacted the OTSA to prohibit, *inter alia*, the transmission of unsolicited sales calls and text messages to its residents' telephones. The statute became effective on November 1, 2022.

8. The OTSA provides, in pertinent part: “A person may not make or knowingly allow a commercial telephonic sales call to be made if such call involves an automated system for the selection or dialing of telephone numbers or the playing of a recorded message when a connection is completed to a number called without the prior express written consent of the called party.” Okla. Stat. tit. 15, § 775C.3(A).

9. “Called party” is defined as “a person who is the regular user of the telephone number that receives a commercial telephonic sales call.” *Id.* § 775C.2(1).

10. “Prior express written consent” is defined, in pertinent part, as “a written agreement that . . . [b]ears the signature of the called party[,] [c]learly authorizes the person making or allowing the placement of a commercial telephonic sales call by telephone call [or] text message . . . to deliver or cause to be delivered to the called party a commercial telephonic sales call using an automated system for the selection or dialing of telephone numbers[,] . . . [i]ncludes the telephone number to which the signatory authorizes a commercial telephonic sales call to be delivered[,] and [i]ncludes a clear and conspicuous disclosure informing the called party that”:

By executing the agreement, the called party authorizes the person making or allowing the placement of a commercial telephonic sales call to deliver or cause to be delivered a commercial telephonic sales call to the called party using an automated system for the selection or dialing of telephone numbers . . . ; and

He or she is not required to sign the written agreement directly or indirectly or to agree to enter into such an agreement as a condition of purchasing any property, goods, or services.

*Id.* § 775C.2(3); *see also id.* § 775C.2(4) (“‘Signature’ includes an electronic or digital signature, to the extent that such form of signature is recognized as a valid signature under applicable federal law or state contract law.”).

11. “There is a rebuttable presumption that a commercial telephonic sales call made to any area code in this state is made to an Oklahoma resident or to a person in this state at the time of the call.” *Id.* § 775C.3(D).

12. A called party who is aggrieved by a violation of the OTSA may bring an action to enjoin such violations from occurring in the future pursuant to § 775C.6(A)(1), and to recover \$500.00 for each violation pursuant to § 775C.6(A)(2) (or up to \$1,500.00 for each violation committed knowingly or willfully pursuant to § 775C.6(B)).

#### **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

13. Since November 1, 2022, Plaintiff has received, at the 2058 Number, at least one text message that Defendant made or knowingly allowed another person to make on its behalf.

14. For example, on or about February 23, 2023, Defendant made, or knowingly allowed to be made on its behalf, a text message to the 2058 Number that stated as follows:

Office Depot: 128 Oz Tide Simply Clean & Fresh for \$10.99. Clean deep, fight stains & remove tough odors. Save Now: odp.biz/cbs.  
Text Stop to opt-out.

15. The text messages that Defendant made or knowingly allowed another person to make on its behalf to Plaintiff’s 2058 Number constituted “commercial telephonic sales calls” within the meaning of the OTSA.

16. Plaintiff is the “regular user of” the 2058 Number, and is therefore the “called party” with respect to the subject text messages made by or on behalf of Defendant to the 2058 Number. *See* § 775C.2(1).

17. Each text message sent by or on behalf of Defendant to Plaintiff's 2058 Number originated from the telephone number 33768, which is number leased or owned by or on behalf of Defendant that Defendant uses or knowingly allows another person to use to transmit commercial telephonic sales calls, in the form of text messages, to consumers in an automated and *en masse* fashion.

18. All telephone contact by Defendant or affiliates, subsidiaries, or agents of Defendant to Plaintiff's 2058 Number occurred using an "automated system for the selection or dialing of telephone numbers" within the meaning of Okla. Stat. tit. 15, § 775C.3(A). Specifically, Defendant utilized an "automated system for the selection or dialing of telephone numbers" to transmit the subject text messages to Plaintiff's 2058 Number because such messages were sent from telephone numbers used to message consumers *en masse*; because Defendant's dialing equipment includes features substantially similar to a predictive dialer, inasmuch as it is capable of making numerous calls or texts simultaneously; and because the hardware and software used by Defendant to send such messages have the capacity to both select numbers to be dialed and to dial such numbers in an automated fashion. And indeed, Defendant (or another person Defendant knowingly allowed to act on its behalf) actually transmitted the text messages at issue in this case to Plaintiff in an automated fashion, with hardware and software that automatically selected and dialed Plaintiff's 2058 Number and the other telephone numbers to which it transmitted such text messages.

19. Because Plaintiff's cellular phone alerts her whenever she receives a text message, each commercial telephonic sales call by or on behalf of Defendant to Plaintiff's 2058 Number invaded Plaintiff's privacy and intruded upon Plaintiff's seclusion upon receipt.



20. Plaintiff has never provided her “prior express written consent” to Defendant or any other party acting on Defendant’s behalf to authorize the subject commercial telephonic sales calls to the 2058 Number by means of an “automated system for the selection or dialing of telephone numbers” within the meaning of Okla. Stat. tit. 15, § 775C.2(3). Indeed, prior to making (or knowingly allowing another person to make on its behalf) the subject commercial telephonic sales calls to Plaintiff’s 2058 Number, Defendant lacked a signed written agreement with Plaintiff that complies with the requirements of Okla. Stat. tit. 15, § 775C.2(3).

### CLASS ALLEGATIONS

21. Class Definition. Plaintiff brings this civil class action on behalf of herself individually and on behalf of all other similarly situated persons as a class action pursuant to Okla. Stat. tit. 12, § 2023. The “Class” which Plaintiff seeks to represent is comprised of and defined as follows:

All persons who, at any time since November 1, 2022, received, at a telephone number assigned an Oklahoma area code, a commercial telephonic sales call made by or on behalf of Defendant using the same type of equipment used to make commercial telephonic sales calls to Plaintiff.

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

22. Plaintiff reserves the right to modify the definition of the Class (or add one or more subclasses) after further discovery.

23. The members of the class are ascertainable because the class is defined by reference to objective criteria. In addition, the members of the class are identifiable in that, upon information and belief, their cellular telephone numbers, names and addresses can be identified in business records maintained by Defendant and/or by third parties.

24. Plaintiff and all Class members have been impacted and harmed by the acts of Defendant or its affiliates, agents, or subsidiaries acting on its behalf.

25. This Class Action Complaint seeks injunctive relief and monetary damages.

26. Defendant or any affiliates, subsidiaries, or agents of Defendant have acted on grounds generally applicable to the Class, thereby making final injunctive relief and corresponding declaratory relief with respect to the Class as a whole appropriate. Moreover, on information and belief, Plaintiff alleges that the OTSA violations complained of herein are substantially likely to continue in the future if an injunction is not entered.

27. This class action satisfies the numerosity, typicality, adequacy, commonality, predominance, and superiority requirements.

28. Numerosity. The number of persons within the Class is substantial, believed to amount to at least several thousand persons dispersed throughout Oklahoma, who collectively received at least tens of thousands of commercial telephonic sales calls by or on behalf of Defendant since November 1, 2022. It is, therefore, impractical to join each member of the Class as a named plaintiff. Further, the size and relatively modest value of the claims of the individual members of the Class renders joinder impractical. Accordingly, utilization of the class action mechanism is the most economically feasible means of determining and adjudicating the merits of this litigation. The disposition of the claims in a class action will provide substantial benefits to the parties and the Court.

29. Typicality. Plaintiff received at least one commercial telephonic sales call from Defendant since November 1, 2022 while in Oklahoma, and Defendant lacks any record establishing Plaintiff's "prior express written consent." Consequently, the claims of Plaintiff are typical of the claims of the members of the Class, and Plaintiff's interests are consistent with and not antagonistic to those of the other Class members she seeks to represent. Plaintiff and all members of the Class have been impacted by, and face continuing harm arising out of, Defendant's OTSA-violative misconduct as alleged herein.

30. Adequacy. As the proposed Class representative, Plaintiff has no interests adverse to or which conflict with the interests of the absent members of the Class, and she is able to fairly and adequately represent and protect the interests of such a Class. Plaintiff has raised viable statutory claims of the type reasonably expected to be raised by members of the Class and will vigorously pursue these claims. If necessary as the litigation (including discovery) progresses, Plaintiff may seek leave to amend this Class Action Complaint to modify the Class definition set forth above, add additional Class representatives, or assert additional claims.

31. Competency of Class Counsel. Plaintiff has retained and is represented by experienced, qualified, and competent counsel committed to prosecuting this action. Plaintiff's counsel are experienced in handling complex class action claims, including in particular claims brought under consumer protection and data-privacy statutes similar to the OTSA.

32. Commonality and Predominance. There are well-defined common questions of fact and law that exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member and may be determined without reference to the individual circumstances of any Class member, include (but are not limited to) the following:

- a. Whether Defendant made or knowingly allowed another person to make the subject text messages to Plaintiff's and Class members' cellular telephones;
- b. Whether such text messages constitute "commercial telephonic sales calls" within the meaning of the OTSA;
- c. Whether such text messages were sent using an "automated system for the selection or dialing of telephone numbers" within the meaning of Okla. Stat. tit. 15, § 775C.3(A);
- d. Whether Defendant can meet its burden to show that it obtained "prior express written consent" to transmit the subject text messages within the meaning of Okla. Stat. tit. 15, § 775C.2(3), assuming such an affirmative defense is timely raised;
- e. Whether any of the violations of the OTSA committed by or on behalf of Defendant were knowing or willful;
- f. The amount of statutory damages to which Plaintiff and the Class are entitled as a result of any violations of the OTSA committed by or on behalf of Defendant; and
- g. Whether Defendant or any affiliates, subsidiaries, or agents of Defendant should be enjoined from engaging in such conduct in the future.

33. Superiority. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because the prosecution of individual litigation on behalf of each Class member is impracticable. Even if every member of the Class could afford to pursue individual litigation, the court system could not; multiple trials of the same factual issues would magnify the delay and expense to all parties and the court system. Individualized litigation would also present the potential for varying, inconsistent or contradictory judgments. By contrast, the maintenance of this action as a class action, with respect to some or all of the issues presented herein, presents few management difficulties, conserves the resources of the parties and the court

system and protects the rights of each member of the Class. Plaintiff anticipates no difficulty in the management of this action as a class action. Class wide relief is essential to compel compliance with the OTSA and thus protect consumers' privacy. The interests of Class members in individually controlling the prosecution of separate claims is small because the statutory damages recoverable in an individual action for violation of the OTSA are likewise relatively small. Management of these claims is likely to present significantly fewer difficulties than are presented in many class actions because the text messages at issue are all automated and because Defendant lacks any record reflecting that it obtained the requisite prior express written consent from any Class member to be sent such messages. Class members can be readily located and notified of this class action by reference to Defendant's records and, if necessary, the records of Defendant's affiliates, agents, or subsidiaries and cellular telephone providers.

34. Additionally, the prosecution of separate actions by individual Class members would create a risk of multiple adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other members of the Class who are not parties to such adjudications, thereby substantially impairing or impeding the ability of such nonparty Class members to protect their interests. The prosecution of individual actions by Class members could also establish inconsistent results and/or establish incompatible standards of conduct for Defendant.

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

36. On application by Plaintiff's counsel for class certification, Plaintiff may also seek certification of subclasses in the interests of manageability, justice, or judicial economy.

**CLAIM FOR RELIEF**  
**VIOLATION OF OKLAHOMA'S TELEPHONE SOLICITATION ACT**  
**(Okla. Stat. tit. 15, § 775C.1, *et seq.*)**

37. Plaintiff incorporates by reference the foregoing paragraphs of this Class Action Complaint as if fully stated herein.

38. Since November 1, 2022, Defendant has made, or knowingly allowed to be made on its behalf by another person, at least one text message to the 2058 Number, and Plaintiff received such text messages in Oklahoma. The 2058 Number is assigned an area code that corresponds to locations in Oklahoma.

39. Likewise, since November 1, 2022, Defendant has made, or knowingly allowed to be made on its behalf by another person, at least one text message to each of the telephone numbers regularly used by the members of the Class in Oklahoma.

40. Because Plaintiff is, and at all relevant times referenced herein was, the “regular user of” the 2058 Number, Plaintiff was the “called party” with respect to each of the text messages made by Defendant (or knowingly allowed to be made on its behalf by another person) to the 2058 Number. *See* Okla. Stat. tit. 15, § 775C.2(1).

41. At least one of the text messages made by Defendant (or that Defendant knowingly allowed to be made on its behalf by another person) to the 2058 Number constituted a “commercial telephonic sales call” within the meaning of the OTSA.

42. Likewise, at least one of the text messages made by Defendant (or that Defendant knowingly allowed to be made on its behalf by another person) to each of the telephone numbers regularly used by the members of the Class constituted a “commercial telephonic sales call” within the meaning of the OTSA.

43. Each of the commercial telephonic sales calls made by Defendant (or that Defendant knowingly allowed to be made on its behalf by another person) to Plaintiff's 2058 Number and to the Class members' telephone numbers occurred using an "automated system for the selection or dialing of telephone numbers" within the meaning of Okla. Stat. tit. 15, § 775C.3(A).

44. Prior to making or knowingly allowing another person to make on its behalf the subject commercial telephonic sales calls to Plaintiff and the members of the Class, Defendant failed to obtain the "prior express written consent" from Plaintiff or any member of the Class. Indeed, prior to making the subject commercial telephonic sales calls to Plaintiff's 2058 Number and to the telephone numbers regularly used by the members of the Class, Defendant lacked a signed written agreement with Plaintiff or any Class member that complies with the requirements of Okla. Stat. tit. 15, § 775C.2(3).

45. Plaintiff and all Class members are entitled to, and do seek, injunctive relief prohibiting Defendant's future transmission of commercial telephonic sales calls to the telephone numbers regularly used by Plaintiff and the members of the Class absent their prior express written consent pursuant to Okla. Stat. tit. 15, § 775C.6(A)(1), as well as an award of \$500.00 in statutory damages for each violation of the OTSA committed by or on behalf of Defendant pursuant to Okla. Stat. tit. 15, § 775C.6(A)(2) (or \$1,500 for each such violation committed willfully or knowingly pursuant to Okla. Stat. tit. 15, § 775C.6(B)).

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff Teresa Brown prays for relief and judgment in favor of herself and the Class as follows:

A. Injunctive relief sufficient to ensure Defendant refrains from violating the OTSA in the future pursuant to Okla. Stat. tit. 15, § 775C.6(A)(1);

B. Statutory damages of \$500.00 for herself and each Class member for each of Defendant's violations of the OTSA (or \$1,500.00 for each such violation to the extent committed willfully or knowingly) pursuant to Okla. Stat. tit. 15, § 775C.6(A)(2) & (B);


C. An Order, pursuant to Okla. Stat. tit. 12, § 2023, certifying this action to be a proper class action, establishing an appropriate Class and any Subclass(es) the Court deems appropriate, finding that Plaintiff is a proper representative of the Class, and appointing the attorneys representing Plaintiff as counsel for the Class; and

D. An award of attorneys' fees and costs to Plaintiff's counsel pursuant to Okla. Stat. tit. 12, § 2023(G).

**DEMAND FOR JURY TRIAL**

On behalf of herself and all others similarly situated, Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: May 24, 2023

By: 

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