

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JULIE BROWN, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ZEALTHY, INC.,

Defendant.

Civil Case No.: 4:26-CV-386

COMPLAINT - CLASS ACTION

INTRODUCTION

1. This action arises out of the marketing practices of Defendant, Zealthy, Inc.’s (“Defendant”), that violate the Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.* (“TCPA”).

2. Defendant sends telemarketing text messages advertising Defendant’s products and services.

3. Defendant continues to send telemarketing text messages even after it receives multiple requests from the called party requesting that Defendant stop sending its messages.

4. Accordingly, Plaintiff Julie Brown (“Plaintiff”) brings this action on behalf of herself and classes of similarly situated individuals.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute.

6. The Court has jurisdiction over Defendant because Defendant conducts business transactions in this District, has committed tortious acts in this District and has targeted residents of this District with its telemarketing campaigns.

7. Venue is proper in this District because Defendant conducts business transactions within this District and because some of the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

PARTIES

8. Ms. Brown is, and at all times mentioned herein was, a citizen and resident of Port Matilda, Pennsylvania.

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

10. Defendant is, and at all times mentioned herein was, a Delaware corporation headquartered at 30 Irving Place, New York, NY 10003.

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

TCPA BACKGROUND

12. In 1991, Congress enacted the TCPA to regulate the explosive growth

of the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy[,]” and found that federal legislation was needed because “telemarketers [could] evade [state-law] prohibitions through interstate operations.” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012) (citations omitted).

National Do Not Call Registry

13. The TCPA establishes a national “do not call” database of numbers not to be called. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 18 FCC Rcd. 14014 (“DNC Order”).

14. These regulations are codified at 47 C.F.R. §§ 64.1200(c)(1-2).

15. Specifically, a company may not initiate any “telephone solicitation” to a telephone subscriber “who has registered his or her telephone number on the national do-not-call registry of persons who do not wish to receive telephone solicitations that is maintained by the Federal Government.” 47 C.F.R. § 64.1200(c)(2).

16. A violation of 47 C.F.R. § 64.1200(c) carries statutory damages of \$500 to \$1,500 per call through § 227(c) of the TCPA.

Internal Do Not Call Regulations

17. The TCPA also required the FCC to “initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers’ privacy rights to

avoid receiving telephone solicitations to which they object.” 47 U.S.C. § 227(c)(1).

18. The FCC was instructed to “compare and evaluate alternative methods and procedures (including the use of ... company-specific do not call systems ...)” and “develop proposed regulations to implement the methods and procedures that the Commission determines are most effective and efficient to accomplish purposes of this section.” *Id.* at (c)(1)(A), (E).

19. Pursuant to this statutory mandate, the FCC established company-specific “do not call” rules. *In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd. 8752 (Oct. 16, 1992) (“TCPA Implementation Order”).

20. The FCC found that “the company-specific do-not-call list alternative is the most effective and efficient means to permit telephone subscribers to avoid unwanted telephone solicitations.” *Id.* at 8765, ¶ 23.

21. However, recognizing that an honor system would probably be insufficient, the FCC found that it “must mandate procedures for establishing company-specific do-not-call lists to ensure effective compliance with and enforcement of the requirements for protecting consumer privacy.” *Id.* at ¶ 24.

22. These regulations are codified at 47 C.F.R. § 64.1200(d)(1)-(7).

23. Specifically, these regulations require a company to keep a written policy, available upon demand, for maintaining a do-not-call list, train personnel

engaged in telemarketing on the existence and use of its internal do-not-call list, and record and honor “do not call” requests for no less than five years from the time the request is made. 47 C.F.R. § 64.1200(d) (1, 2, 3, 6).

24. These policies and procedures prohibit a company from making calls for telemarketing purposes unless they have implemented these policies and procedures. 47 C.F.R. § 64.1200(d).

25. Accordingly, all telemarketing calls violate the TCPA, unless Defendant can demonstrate that it has implemented the required policies and procedures.

26. There is a private right of action to enforce 47 C.F.R. § 64.1200(d) through § 227(c):

[S]ection 227(c)(5)... empowers ‘any person’ to sue for damages and injunctive relief for do-not-call violations ‘by or on behalf of’ a company. In accordance with this statutory provision, the Commission’s company-specific do-not-call rules provide that ‘[n]o person or entity shall initiate any call for telemarketing purposes to a residential telephone subscriber unless such person or entity has instituted procedures for maintaining a list of persons who request not to receive telemarketing calls made by or on behalf of that person or entity[.]’ 47 C.F.R. § 64.1200(d).

In re Dish Network, 28 FCC. Rcd. 6574, ¶ 29 (2013)

27. A company must comply with the procedures for the company specific do-not-call list. A failure to comply with either is distinct a violation of 47 U.S.C. § 227(c).

28. Though some of these requirements mention “residential” telephones, they were all extended to cover calls to cellular telephones that are used for residential purposes. 47 C.F.R. § 64.1200(e).

29. Further, a person or entity can be liable for calls made on its behalf in violation of the TCPA, even if that person or entity did not directly dial such calls. *See, e.g., In re Rules & Regs. Implementing the TCPA*, 10 FCC Rcd. 12391, 12397 ¶ 13 (1995) (explaining that the FCC’s “rules generally establish that the party on whose behalf a solicitation is made bears ultimate responsibility for any [TCPA] violations”). In fact, in May 2013, the FCC issued a binding declaratory ruling clarifying that sellers “may be held vicariously liable under federal common law principles of agency for TCPA violations committed by third-party telemarketers . . . under a broad range of agency principles, including not only formal agency, but also principles of apparent authority and ratification.” *In re Joint Petition Filed by DISH Netowrk, LLC et al. for Declarator Ruling Concerning the TCPA Rules*, 28 FCC Rcd. 6574, 6584 ¶28 (2013).

30. Accordingly, an entity can be liable under the TCPA for a prohibited call made on its behalf under a number of theories including vicarious liability. Under those circumstances, the seller is properly deemed to have initiated the call through the person or entity that actually placed the call.

31. Finally, text messages, such as the ones sent by Defendant, are subject

to the TCPA and its implementing regulations. *See* Fed. Commc'ns Comm., Enforcement Advisory No. 2016-06, DA 16-1299, *Robotext Consumer Protection: Text Message Senders Must Comply With the Telephone Consumer Protection Act* (Nov. 18, 2016).

GENERAL FACTUAL ALLEGATIONS

32. Defendant, or someone acting on its behalf and at its direction, sends text messages marketing its weight loss products and services.

33. These text messages come from short code 24628.

34. These text messages include links that when clicked direct the user's cellular telephone internet browser application to Defendant's website.

35. The links included in the text messages use the domain "zealthy.link".

36. Because these text messages advertise Defendant's products and services, they constitute telemarketing messages and telephone solicitations.

PLAINTIFF'S FACTUAL ALLEGATIONS

37. Plaintiff Brown is the sole and customary user of cellular telephone number (814)-XXX-1511.

38. The area code 814 is an area code assigned for use in the Commonwealth of Pennsylvania.

39. Plaintiff cellular telephone number, (814)-XXX-1511, is a personal telephone number and is used for residential purposes.

40. Plaintiff's cellular telephone number, (814)-XXX-1511, has been on the National Do-Not-Call Registry since October 16, 2004.

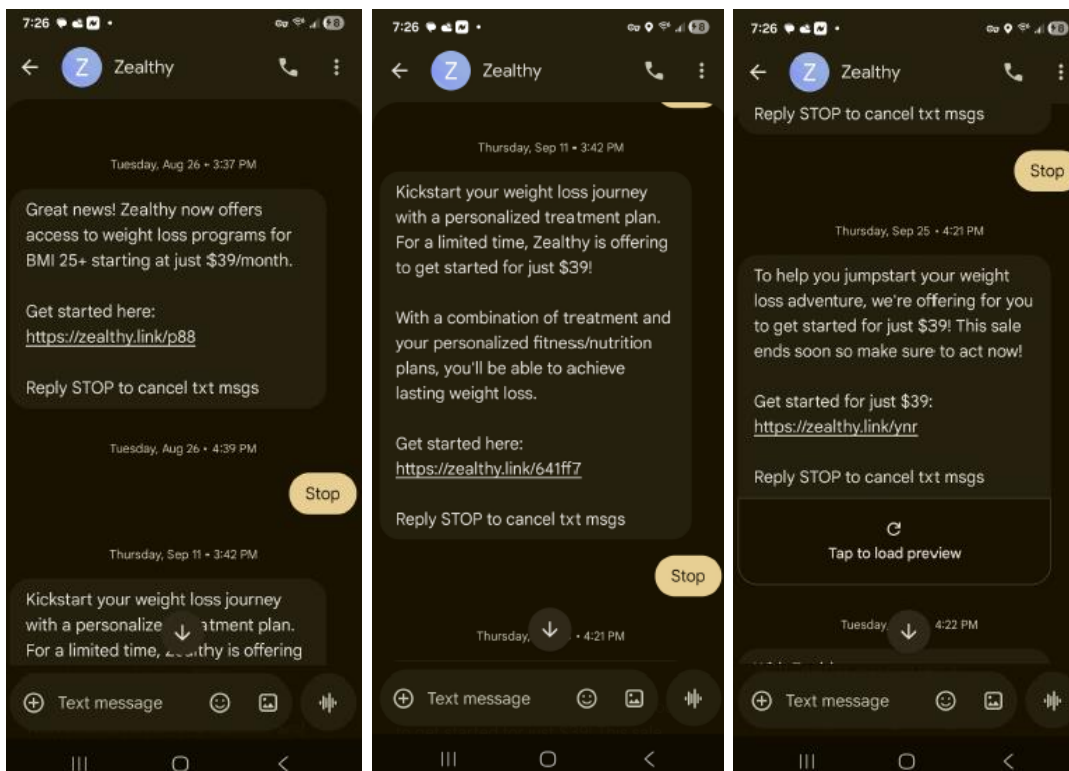
41. On or about August 26, 2025, Plaintiff began receiving telemarketing text messages from Defendant.

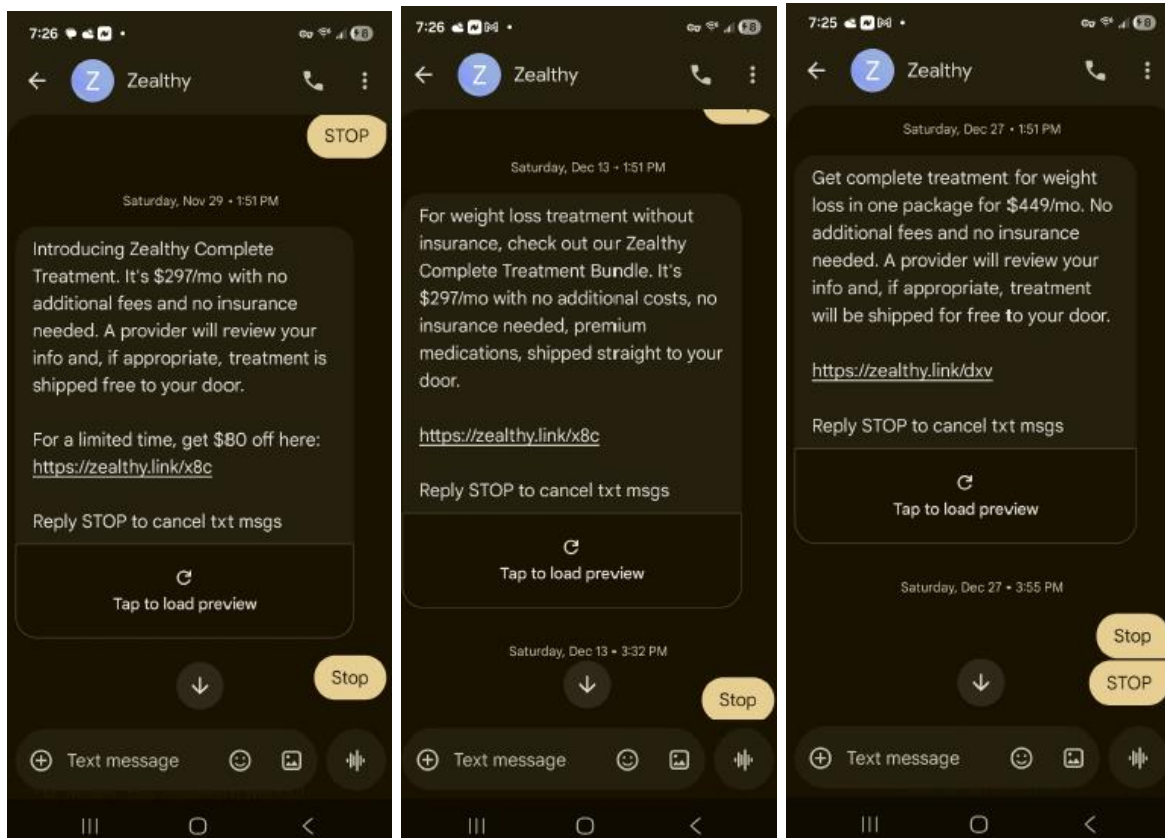
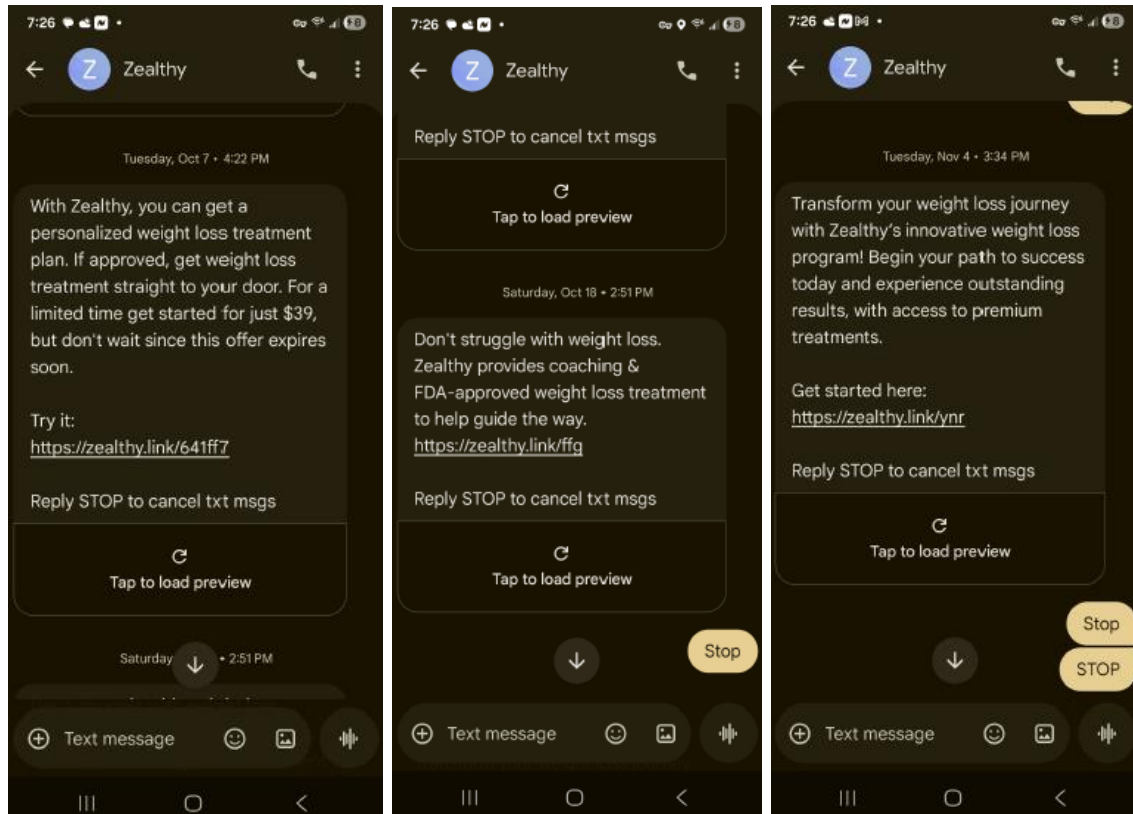
42. Each of these text messages came from short code 24628.

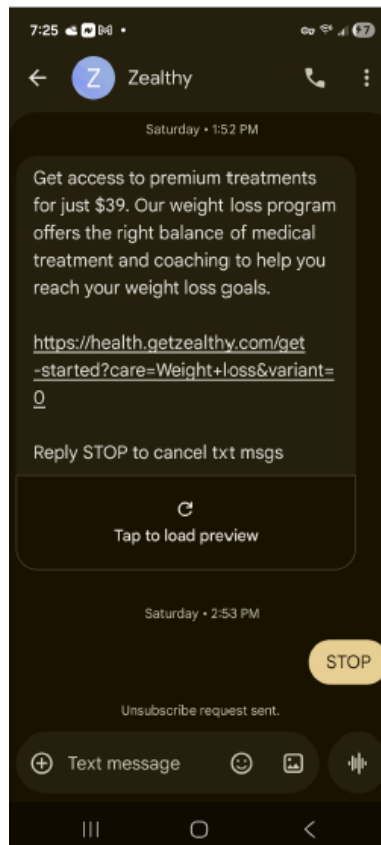
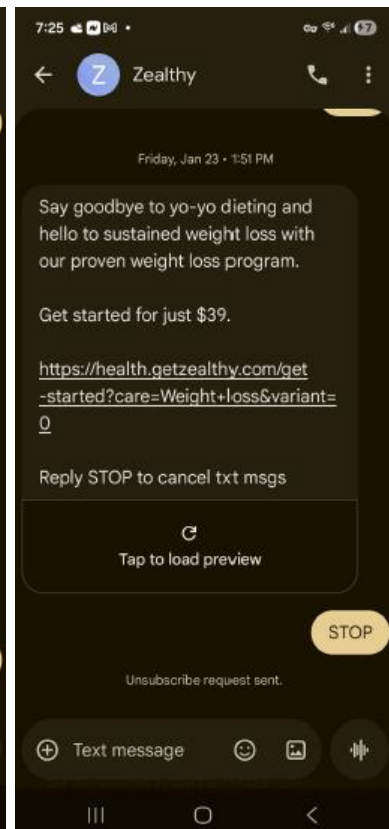
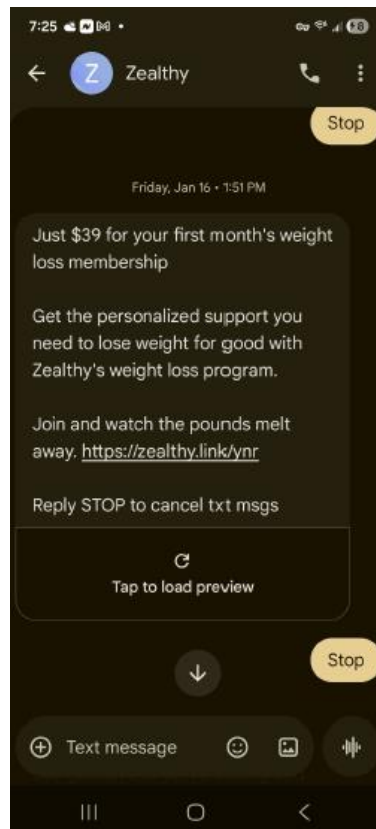
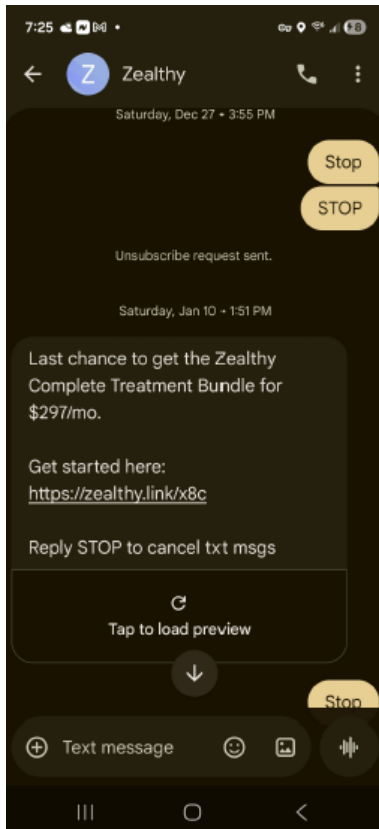
43. These text messages included instructions as to how to unsubscribe and receive no further messages.

44. However, they did not work and did not operate to stop the messages.

45. For example, and as shown below, Defendant continued texting Plaintiff even after she requested that Defendant stop sending her text messages and followed Defendant's instructions for unsubscribing:







46. As shown above, Defendant continued sending Plaintiff telemarketing text messages after Plaintiff repeatedly asked that Defendant stop sending such messages.

47. Defendant did not have consent to send Plaintiff the messages identified above.

48. To the extent ever had consent to send Plaintiff telemarketing text messages, Plaintiff revoked such consent (repeatedly), as shown above.

49. Defendant or those otherwise sending text messages on Defendant's behalf, did not have written do-not-call policies or procedures at the time of the texts to Plaintiff and the classes defined below. Alternatively, whatever written policies existed either failed to comply with the minimum requirements under the TCPA, 47 C.F.R. § 64.1200(d), or were never properly implemented—including as evidenced by the continued text messages to Plaintiff after she directly asked not to be contacted.

50. In addition, after receiving Plaintiff's "STOP" text message, Defendant had a duty to ensure that it was not texting telephone numbers on the National Do Not Call Registry.

51. Had Defendant scrubbed its marketing list against the National Do Not Call Registry, it would have not texted Plaintiff, because her number appears on the National Do-Not-Call Registry.

52. Defendant's violations were negligent.

53. Alternatively, Defendant's violations were willful and knowing.

54. Plaintiff and the classes were damaged by the violations alleged herein.

Their privacy was improperly invaded, Defendant's text messages temporarily seized and trespassed upon the use of their phones, and they were forced to divert attention away from other activities to address the unwanted text messages. The text messages were annoying and a nuisance, and wasted the time of Plaintiff and the class members. *See, e.g., Mims*, 565 U.S. at 372 (discussing congressional findings of consumer "outrage" as to prerecorded calls).

DEFENDANT'S LIABILITY

55. Defendant, or someone acting on its behalf or at its direction, sends text messages, to hundreds if not thousands of consumers across the U.S. as part of its marketing strategy.

56. Defendant sent two or more telephone solicitations to Plaintiff, whose number was on the National Do-Not-Call Registry at the time of the text messages. This constitutes a violation of 47 U.S.C. § 227(c) through 47 C.F.R. § 64.1200(c).

57. Accordingly, for violations of 47 C.F.R. § 64.1200(c), Plaintiff is entitled to \$500 per call through 47 U.S.C. § 227(c).

58. Plaintiff is entitled to an additional \$1,500 per call if Defendant's actions are found to be knowing or willful.

59. Defendant made two or more telemarketing calls to Defendant despite not having in place the required policies and procedures prior to making such calls – as evidenced by Defendant’s failure to stop texting Plaintiff when she requested. This constitutes a violation of 47 U.S.C. § 227(c) through 47 C.F.R. § 64.1200(d).

60. Accordingly, for violations of 47 C.F.R. § 64.1200(d), Plaintiff is entitled to an additional \$500 per call through 47 U.S.C. § 227(c).

61. Plaintiff is entitled to an additional \$1,500 per call if Defendant’s actions are found to be knowing or willful.

CLASS ACTION ALLEGATIONS

62. Plaintiff brings this action under Fed. R. Civ. P. 23 on behalf of the Class as defined as follows:

National Do-Not-Call Class: Plaintiff and all persons within the United States to whose telephone number Defendant placed (or had placed on its behalf) two or more telemarketing calls and/or text messages in a 12-month period when the telephone number to which the telephone calls or texts were made was on the National Do-Not-Call Registry for 31 days or more at the time of the calls/texts, from four years prior to the filing of the Complaint through class certification.

Internal Do-Not-Call Class: Plaintiff and all persons within the United States whose telephone number Defendant placed (or had placed on its behalf) two or more telemarketing calls in a 12-month period, including at least one after the person requested that the calls or messages stop from four (4) years prior to the filing of the Complaint to the date of class certification.

63. Excluded from the Class are Defendant and any entities in which Defendant has a controlling interest; Defendant’s agents and employees; any Judge

and Magistrate Judge to whom this action is assigned and any member of their staffs and immediate families, and any claims for personal injury, wrongful death, and/or emotional distress.

64. The Members of the Class for whose benefit this action is brought are so numerous that joinder of all members is impracticable.

65. The exact number and identities of the persons who fit within the Class are ascertainable in that Defendant and third parties maintain written and electronically stored data showing:

- a. The time period(s) during which Defendant placed its text messages;
- b. The telephone numbers to which Defendant placed its text messages;
- c. The telephone numbers for which Defendant had prior express written consent;
- d. The purposes of such text messages;
- e. The telephone numbers that replied to Defendant's text messages with a message communicating a desire that Defendant stop sending text messages; and
- f. The names and addresses of Class members.

66. The Class is comprised of hundreds, if not thousands, of individuals.

67. There are common questions of law and fact affecting the rights of the Members of the Class, including, *inter alia*, the following:

- a. Whether Defendant sends telemarketing text messages or has them sent on its behalf;
- b. Whether Defendant obtains prior express written consent;
- c. Whether Defendant or the entity with which it contracts to send its messages sends solicitation text messages to telephone numbers registered on the National Do-Not-Call Registry;
- d. Whether Defendant had the required policies and procedures prior to sending telemarketing text messages;
- e. Whether Defendant honors do-not-call requests;
- f. Whether Defendant's statutory violations were willful and knowing;
- g. Whether Plaintiff and the Class were damaged thereby, and the extent of damages for such violations; and
- h. Whether Defendant should be enjoined from engaging in such conduct in the future.

68. Plaintiff is a member of the Classes in that Defendant placed two or more texts for telemarketing purposes in a one-year period to her telephone number, after she asked Defendant to stop, when her telephone number was on the National Do-Not-Call Registry.

69. Plaintiff's claims are typical of the claims of the Members of the Classes in that they arise from Defendant's uniform conduct and are based on the same legal theories as these claims.

70. Plaintiff and all putative Members of the Classes have also necessarily suffered concrete harm in addition to statutory damages, as all Members of the Class spent time tending to Defendant's unwanted text messages, lost space on their devices, and suffered a nuisance and an invasion of their privacy.

71. Plaintiff has no interests antagonistic to, or in conflict with, the Classes.

72. Plaintiff will thoroughly and adequately protect the interests of the Classes, having retained qualified and competent legal counsel to represent themselves and the Classes.

73. Defendant has acted and refused to act on grounds generally applicable to the Classes, thereby making injunctive and declaratory relief appropriate for the Classes.

74. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

75. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member make individual actions uneconomical.

76. Common questions will predominate, and there will be no unusual manageability issues.

FIRST CAUSE OF ACTION
Violations of the TCPA, 47 U.S.C. § 227(c)
(On Behalf of Plaintiff and the National Do-Not-Call Class)

77. Plaintiff and the proposed National Do Not Call Class incorporate the foregoing allegations as if fully set forth herein.

78. Defendant sent, or had sent on its behalf, text messages constituting telephone solicitations to Plaintiff's and Class Members' telephone numbers.

79. Plaintiff's and Class Members' telephone numbers were all on the National Do-Not-Call Registry at the time of the text messages.

80. Plaintiff and Class Members each received two or more such text messages in a 12-month period.

81. Plaintiff and Class Members are entitled to an award of \$500 in statutory damages for each text message pursuant to 47 U.S.C. § 227(c)(5).

82. Plaintiff and Class Members are entitled to an award of treble damages in an amount up to \$1,500 for each text message made knowingly and/or willfully, pursuant to 47 U.S.C. § 227(c)(5).

SECOND CAUSE OF ACTION
Violations of the TCPA, 47 U.S.C. § 227(c)
(On behalf of Plaintiff and the Internal Do-Not-Call Class)

83. Plaintiff and the proposed Internal Do-Not-Call Class incorporate the foregoing allegations as if fully set forth herein.

84. Defendant sent numerous text messages for telemarketing purposes to Plaintiff's and putative Class Members' telephone numbers.

85. Defendant did so despite not having a written policy pertaining to "do not call" requests.

86. Defendant did so despite not training its personnel on the existence or use of any internal "do not call" list or policy.

87. Defendant did so despite not recording or honoring "do not call" requests.

88. Defendant sent two or more telemarketing text messages to Plaintiff and putative Class Members' telephone numbers in a 12-month period.

89. Plaintiff and putative Internal Do-Not-Call Class Members are entitled to an award of \$500 in statutory damages per telephone call pursuant to 47 U.S.C. § 227(c)(5).

90. Plaintiff and putative Internal Do-Not-Call Class Members are entitled to an award of treble damages in an amount up to \$1,500 per telephone call, pursuant to 47 U.S.C. § 227(c)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Classes, prays for the following relief:

- A. An order certifying the Classes as defined above, appointing Plaintiff as the representative of the Classes and appointing her counsel as Class Counsel;
- B. An order declaring that Defendant's actions, as set out above, violate the Telephone Consumer Protection Act;
- C. An award of injunctive and other equitable relief as necessary to protect the interests of the Class, including, *inter alia*, an order prohibiting Defendant from engaging in the wrongful and unlawful acts described herein;
- D. An award of statutory damages;
- E. An award of treble damages;
- F. An award of reasonable attorneys' fees and costs; and
- G. Such other and further relief that the Court deems reasonable and just.

JURY DEMAND

Plaintiff requests a trial by jury of all claims that can be so tried.

Dated: February 17, 2026

s/ Max S. Morgan
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