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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**

10
11 MATTHEW RIGHETTI, on behalf of)
12 himself and all similarly situated persons,)

13 Plaintiff,)

14 vs.)

15 The Humane Society of the United States,)

16 Defendants.)
17)
18)
19)
20)

Case No.:

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION ACT**

DEMAND FOR JURY TRIAL

1 Plaintiff, MATTHEW RIGHETTI (“Plaintiff”), a San Francisco County,
2 California resident, brings this action on behalf of himself and the alleged class of
3 persons similarly situated against Defendant The Humane Society of the United States
4 and other unknown Defendants whose involvement in the alleged acts complained of
5 herein will be the subject of immediate discovery (“Defendants”) for violations of the
6 Telephone Consumer Protection Act (“TCPA”). Plaintiff brings this action as a class
7 action against Defendant pursuant to Rule 23 of the Federal Rules of Civil Procedures,
8 to stop Defendant’s practice of sending unsolicited text messages to the cellular
9 telephones of consumers nationwide and to obtain redress for all persons injured by
10 Defendant’s conduct.

11 **NATURE OF THE ACTION**

12 1. Plaintiff brings this action individually and on behalf of all others similarly
13 situated, for damages pursuant to the Telephone Consumer Protection Act (“TCPA”)
14 under 47 U.S.C. §227.

15 **JURISDICTION AND VENUE**

16 2. This action arises under and is brought pursuant to the TCPA. Subject
17 matter jurisdiction is conferred upon this Court by 47 U.S.C §227, 28 U.S.C. §§1331
18 and 1337, as the action arises under the laws of the United States.

19 3. Venue is proper in this Court pursuant to 28 U.S.C. §1391 as a substantial
20 portion the events or omissions giving rise to the claims occurred here, and Defendant
21 has its headquarters here.

22 4. Plaintiff is a natural person residing in the City and County of San
23 Francisco, which is located within the Northern District of California.

24 5. Plaintiff is a “person” as defined by 47 U.S.C. §153(39).

25 6. Defendant is a 501(c)(3) non-profit organization. Defendant runs
26 a wildlife care center in California and works to support animal welfare legislation,
27 fight animal cruelty in all forms and engage citizens to promote the protection of
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1 animals in California.

2 7. Defendant is a “person” as defined by 47 U.S.C. §153(39)

3 8. Defendant acted through its agents, employees, officers, members,
4 volunteers, staffers, directors, heirs, successors, assigns, principals, trustees, sureties,
5 subrogees, representatives and insurers at all times relevant to the instant action.\

6 **CLASS ALLEGATIONS**

7 9. Plaintiffs bring this claim on behalf of the following class, pursuant to Fed.
8 R. Civ. P. 23(A) AND 23(b(3)).

9 10. The Class consists of:

- 10 a. all individuals residing in the State of California;
11 b. to whom Defendant sent text messages to secure votes in favor of Prop 12;
12 c. without obtaining their permission and/or consent to send text messages to
13 their cellular/mobile telephones; and
14 d. sent on after a date one (1) year prior to the filing of this action and on or
15 before a date twenty-one (21) days after the filing of this action.

16 11. The identities of all class members are readily ascertainable from the
17 records of Defendants.

18 12. Excluded from the Plaintiff Class are the Defendants and all officer,
19 members, partners, managers, directors and employees of the Defendants and their
20 respective immediate families, and legal counsel for all parties to this action, and all
21 members of their immediate families.

22 13. There are questions of law and fact common to the Plaintiff Class, which
23 common issues predominate over any issues involving only individual class members.
24 The principal issue is whether the Defendant's sending of text messages using an
25 automated telephone dialing system to cellular phones of California residents without
26 their permission violates 47 U.S.C. §§227 et seq.

27 14. The Plaintiff’s claims are typical of the class members, as all are based
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1 upon the same facts and legal theories. The Plaintiff will fairly and adequately protect
2 the interests of the Plaintiff Class defined in this complaint. The Plaintiff has retained
3 counsel with experience in handling consumer lawsuits, complex legal issues, and class
4 actions, and neither the Plaintiff nor her attorneys have any interests, which might cause
5 them not to vigorously pursue this action.

6 15. This action has been brought, and may properly be maintained, as a class
7 action pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure
8 because there is a well-defined community interest in the litigation:

- 9 a. **Numerosity:** The Plaintiff is informed and believes, and on that basis alleges,
10 that the Plaintiff Class defined above is so numerous that joinder of all
11 members would be impractical.
- 12 b. **Common Questions Predominate:** Common questions of law and fact exist
13 as to all members of the Plaintiff Class and those questions predominate
14 over any questions or issues involving only individual class members. The
15 principal issue is whether the Defendant's sending of text messages using
16 an automated telephone dialing system to cellular phones of California
17 residents without their permission violates 47 U.S.C. §§ 227 *et seq.*
- 18 c. **Typicality:** The Plaintiff's claims are typical of the claims of the class
19 members. The Plaintiff and all members of the Plaintiff Class have claims
20 arising out of the Defendants' common uniform course of conduct
21 complained of herein.
- 22 d. **Adequacy:** The Plaintiff will fairly and adequately protect the interests of
23 the class members insofar as Plaintiff has no interests that are adverse to the
24 absent class members. The Plaintiff is committed to vigorously litigating this
25 matter. Plaintiff has also retained counsel experienced in handling consumer
26 lawsuits, complex legal issues, and class actions. Neither the Plaintiff nor her
27 counsel has any interests, which might cause them not to vigorously pursue
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1 the instant class action lawsuit.

- 2 e. **Superiority:** A class action is superior to the other available means for the
3 fair and efficient adjudication of this controversy because individual joinder
4 of all members would be impracticable. Class action treatment will permit a
5 large number of similarly situated persons to prosecute their common claims
6 in a single forum efficiently and without unnecessary duplication of effort
7 and expense that individual action would engender.

8 16. Certification of a class under Rule 23(b)(3) of the Federal Rules of
9 Civil Procedure is also appropriate in that the questions of law and fact common to
10 members of the Plaintiff Class predominate over any questions affecting an individual
11 member, and a class action is superior to other available methods for the fair and
12 efficient adjudication of the controversy.

13 17. Depending on the outcome of further investigation and discovery, Plaintiff
14 may, at the time of class certification motion, seek to certify a class(es) only as to
15 particular issues pursuant to Fed. R. Civ. P. 23(c)(4).

16 **FACTUAL ALLEGATIONS**

17 18. In 2018, Plaintiff received a text message to his cellular phone, (415)
18 XXX-9990 from Defendant showing that the text came from number (760) 548-3535.

19 19. At all times relevant to the instant action, Plaintiff was the sole subscriber,
20 owner, and operator of the cellular phone ending in -9990. Plaintiff is and always has
21 been financially responsible for the cellular phone and its services.

22 20. Plaintiff received at least one text message from Defendant from phone
23 number (760) 548-3535.

24 21. After Plaintiff received the text, he attempted to call the phone number
25 from where the text originated, but when Plaintiff called the phone number that
26 Defendant's text messages came from, the call resulted in an automated message
27 indicating it came from the Humane Society of the United States and it referenced the
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1 “YES on Prop 12” campaign. This illustrates that the text message did not originate
2 from a cellular phone but came from an automated telephone dialing system.

3 22. Defendant knew Plaintiff’s phone number was a cellular telephone phone
4 number before Defendant sent text messages to Plaintiff’s phone.

5 23. Defendant never had permission to text or call Plaintiff’s cellular phone.

6 24. Defendant used an automated phone dialing system to text message
7 Plaintiff’s cellular telephone.

8 25. Defendant sent prerecorded text messages for Plaintiff on Plaintiff’s
9 cellular telephone.

10 26. The telephone dialing system used to call Defendant has the capacity to
11 store telephone numbers.

12 27. The telephone dialing system used to call Defendant has the capacity to
13 call or text telephone numbers automatically.

14 28. The telephone dialer system Defendant used to call Plaintiff’s cellular
15 telephone has the capacity to call or text stored telephone numbers without human
16 intervention.

17 29. The telephone dialer system Defendant used to call or text Plaintiff’s
18 cellular telephone has the capacity to call telephone numbers in sequential order.

19 30. The telephone dialer system Defendant used to call or text Plaintiff’s
20 cellular telephone has the capacity to call telephone numbers randomly.

21 31. The telephone dialer system Defendant used to call or text Plaintiff’s
22 cellular telephone selects telephone numbers to be called according to a protocol or
23 strategy entered by Defendant.

24 32. The telephone dialer system Defendant used to call or text Plaintiff’s
25 cellular telephone simultaneously calls or texts multiple persons.

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COUNT I – VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT

33. Plaintiff re-alleges and incorporates by reference paragraphs in this complaint as though fully set forth herein.

34. The TCPA, pursuant to 47 U.S.C. § 227(b)(1)(iii), prohibits calling or text messaging persons on their cellular phone using an automatic telephone dialing system (“ATDS”) without their consent. The TCPA, under 47 U.S.C. § 227(a)(1), defines an ATDS as “equipment which has the capacity...to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers.”

35. In the case 9th Circuit case of *Marks v Crunch San Diego, LLC* the Court held:

The U.S. Court of Appeals for the Ninth Circuit rejects the argument that a device cannot qualify as an automatic telephone dialing system unless it is fully automatic, meaning that it must operate without any human intervention whatsoever. By referring to the relevant device as an "automatic telephone dialing system," Congress made clear that it was targeting equipment that could engage in automatic dialing, rather than equipment that operated without any human oversight or control. 47 U.S.C.S. § 227(a)(1).

Marks v. Crunch San Diego, LLC, No. 14-56834, 2018 U.S. App. LEXIS 26883, at *1 (9th Cir. 2018).

36. Defendant used an ATDS in connection with its communications directed towards Plaintiff’s cellular phone. The text messages was pre-recorded with similar to identical formatting. None of the phone numbers had the ability to receive a return phone call. This points to the use of an ATDS.

37. Defendant violated the TCPA by sending at least 9 text messages to Plaintiff’s cellular phone using an ATDS without his consent.

38. The calls placed by Defendant to Plaintiff were regarding political campaign activity and not for emergency purposes as defined by the TCPA under 47 U.S.C. §227(b)(1)(A)(i).

1 39. Under the TCPA, pursuant to 47 U.S.C. § 227(b)(3)(B), Defendant is
2 liable to Plaintiff for at least \$500.00 per call. Moreover, Defendant’s willful and
3 knowing violations of the TCPA should trigger this Honorable Court’s ability to triple
4 the damages to which Plaintiff is otherwise entitled to under 47 U.S.C. § 227(b)(3)(C).

5 **WHEREFORE**, Plaintiff, MATTHEW RIGHETTI, individually and on behalf
6 of all others similarly situated, demands judgment from Defendant The Human Society
7 of the United States, as follows:

- 8 a. Declaring that this action is properly maintained as a Class Action and
9 certifying Plaintiff as Class representative, and Reuben Nathan, Esq. as Class
10 Counsel;
- 11 b. Award Plaintiff and the Class statutory damages of at least \$500.00 per phone
12 call/text message and treble damages pursuant to 47 U.S.C. §§
13 227(b)(3)(B)&(C); and
- 14 c. Awarding any other relief as this Honorable Court deems just and appropriate.

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16 Dated: October 26, 2018

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18 Respectfully submitted,

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20 **NATHAN & ASSOCIATES, APC**

21 By: */s/ Reuben D. Nathan*
22 Attorneys for Plaintiff