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16 **UNITED STATES DISTRICT COURT**
17 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

18 **KRISTEN HALL**, *on behalf of herself*
19 *and all others similarly situated.*)

Case No.: 2:21-at-1023

20 *Plaintiff,*)

21 **v.**)

**AMENDED CLASS ACTION
COMPLAINT AND DEMAND
FOR JURY TRIAL**

22 **SMOSH DOT COM, INC.**)
23 **d/b/a SMOSH, and MYTHICAL**)
24 **ENTERTAINMENT, LLC,**)

25 *Defendants.*)

COMPLAINT

Plaintiff, Kristen Hall (“Plaintiff”, “Ms. Hall” or “Hall”), individually, and on behalf of all others similarly situated, and demanding a trial by jury, brings this

1 action against Defendants, Smosh Dot Com, Inc. d/b/a Smosh (hereinafter
2 “Smosh”), and Mythical Entertainment, LLC (hereinafter “Mythical”) (hereinafter
3 collectively referred to as “Defendants”) for violations of the Telephone
4 Consumer Protection Act (TCPA), 47 U.S.C. §227 *et seq.*, and §302.101 of the
5 Texas Business & Commerce Code. In support of this Amended Complaint,
6 Plaintiff, individually, and on behalf of all others similarly situated asserts as
7 follows:
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11 **BACKGROUND:**
12 **TELEMARKETING AND THE TCPA**

13 1. In 1991, Congress enacted the Telephone Consumer Protection Act
14 (“TCPA”) to protect consumers’ privacy rights, namely, the right to be left alone
15 from unwanted telemarketing calls. A leading sponsor of the TCPA described
16 unwanted telemarketing calls as “the scourge of modern civilization.” 137 Cong.
17 Rec. 30821 (1991).
18

19 2. The TCPA also affords special protections for people who registered
20 their phone numbers on the National Do Not Call Registry and nonetheless
21 received telemarketing calls for which they did not expressly consent..
22

23 3. In 2019, the FTC received over 5.4 million complaints from US
24 residents about unwanted calls. *FTC: What Do Not Call Complaints are telling us*
25

1 (Oct. 17, 2019), available at: [https://www.consumer.ftc.gov/blog/2019/10/what-](https://www.consumer.ftc.gov/blog/2019/10/what-do-not-call-complaints-are-telling-us)
2 [do-not-call-complaints-are-telling-us](https://www.consumer.ftc.gov/blog/2019/10/what-do-not-call-complaints-are-telling-us).

3 4. The private right of enforcement of the TCPA is critical to stopping
4 the proliferation of these unwanted telemarketing calls. For example, while the
5 Federal Communications Commission levied over \$200 million in penalties
6 against telemarketers between 2015 and 2018, it collected less than \$7,000 of that
7 amount. See Sarah Krouse, *The FCC Has Fined Robocallers \$208 Million. It's*
8 *Collected \$6,790*, THE WALL STREET JOURNAL, (March 28, 2019) available at:
9 [https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803)
10 [collected-6-790-11553770803](https://www.wsj.com/articles/the-fcc-has-fined-robocallers-208-million-its-collected-6-790-11553770803).

13
14 **DATA-MINING AND TELEMARKETING**
15 **TOWARD MINORS AND SMOSH**

16 5. Where concerns have grown in recent years about the corporate
17 mining of consumer data, that concern is especially heightened when it comes to
18 the data-mining of children. See Stephanie Simon, *The big biz of spying on little*
19 *kids*, POLITICO (May 15, 2014), available at:
20 <https://www.politico.com/story/2014/05/data-mining-your-children-106676>. As
21 Ms. Simon summarized: “the data revolution has also put heaps of intimate
22 information about school children in the hands of private companies — where it is
23 highly vulnerable to being shared, sold or mined for profit.” *Id.*
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25

1 6. On its face, Defendant “Smosh” (owned and operated by Defendant
2 Mythical) is an online retailer geared toward teenagers that offers “sketch
3 comedy” videos online and sells merchandise primarily to its youth customer
4 base.

5
6 7. Smosh and Mythical also derive substantial profits from collecting,
7 selling and transmitting consumer data; much of that data from minors under the
8 age of 18.

9
10 8. When marketing its merchandise, in addition to comparatively
11 passive online marketing, Defendants engage in “direct” telemarketing via text
12 message and calls to phone numbers entered in the website smosh.com.

13
14 9. Despite the fact that a minor cannot provide the “express consent” or
15 required under the TCPA or enter into any type of business relationship, Smosh
16 has routinely sent out solicitous text message to phone numbers provided by
17 minors on the basis that said minor “consented” or “opted in” to receive those
18 communications.

19
20
21 **THE PARTIES**

22 10. Plaintiff and putative class-representative, Kristen Hall is a natural
23 person and adult, who at all times relevant hereto, resided in Willis, Texas
24
25

1 11. Hall is the mother and legal guardian of a child whose information
2 was collected by Defendant.

3 12. Defendant Smosh.com is an online entertainment and merchandise
4 company geared toward adolescents.

5 13. Defendant Smosh.com maintains its headquarters at 1333 Howe
6 Ave., Suite 103, Sacramento, California 95825.

7 14. Defendant Mythical maintains its headquarters at 450 North Roxbury
8 Drive, 8th Floor, Beverly Hills, California, 90210.

9 15. Upon information and belief, Mythical is the parent company, which
10 owns and operates Smosh.com. At all times relevant hereto, the two businesses
11 worked together in concert.

12 16. Plaintiff brings this Action in her individual capacity and on behalf of
13 all other similarly situated seeking damages and any other available legal or
14 equitable remedies resulting from the unlawful actions of Defendants, in
15 negligently, knowingly, and/or willfully contacting Plaintiff and other Class
16 members on their cellular telephone in violation of the Telephone Consumer
17 Protection Act (TCPA), 47 U.S.C. §227 et seq. and related regulations specifically
18 the National Do-Not-Call provisions where the telephone number provided to
19 Defendant was associated with the consumer data of a minor.
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1 17. Plaintiff also brings this action to protect persons located in Texas to
2 whom Defendants improperly placed telephone communications without first
3 obtaining the proper registration certificate.

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6 **JURISDICTION AND VENUE**

7 18. This Court has original subject matter jurisdiction over this matter
8 pursuant to 28 U.S.C. § 1331, which grants this Court original jurisdiction of all
9 civil actions arising under the laws of the United States.

10
11 19. Furthermore, this Court has subject matter jurisdiction pursuant to 28
12 U.S.C. § 1332(d)(2)(A), because this case is a class action where the aggregate
13 claims of all members of the proposed Class are in the excess of \$5,000,000.00,
14 exclusive of interest and costs.

15
16 20. This Court also has supplemental jurisdiction over Plaintiff's state
17 law claims pursuant to 28 U.S.C. § 1367.

18 21. This Court has personal jurisdiction over Defendants, as they
19 maintain their headquarters in the State of California.

20
21 22. Furthermore, Defendant Smosh.com's headquarters are based in
22 Sacramento, California, which is within this District.

23 23. Defendant Mythical does substantial business in this District as well
24 and availed itself to this District by working in concert with Smosh.com.
25

1 24. Accordingly, personal jurisdiction exists and this venue is proper.
2

3 **FACTS PERTAINING TO PLAINTIFF**
4

5 25. At all times pertinent hereto, Plaintiff Kristen Hall was the owner of
6 a cellular phone, the number for which was 575-XXX-0669.

7 26. Ms. Hall would at times, allow her minor son to use that phone.

8 27. The aforementioned cell phone was used primarily for residential
9 purposes.
10

11 28. Plaintiff registered that phone number on the National Do Not Call
12 Registry on or about November 8, 2019.

13 29. Plaintiff did so to obtain solitude from invasive and irritating
14 solicitation calls and to protect her minor son from being inundated with
15 advertisers and data-miners.
16

17 30. Ms. Hall did not consent to being contacted by Defendants.

18 31. On information and belief, on or around November 3, 2019,
19 Defendants obtained the personal data of Plaintiff's minor son, who was 13 years
20 old at the time.
21

22 32. That personal data obtained by Smosh identified that Plaintiff's son
23 was 13 years old at the time, and listed his telephone number as 575-XXX-0669.
24
25

1 33. That personal data also identified that Plaintiff's son was a resident
2 of Texas City, Texas.

3 34. Defendants sent at least 5 text messages from the apparent phone
4 number of (310) 299-9555 to 575-XXX-0669, soliciting Smosh merchandise. The
5 date, time and content of those messages are set forth below:
6

- 7 • December 25, 2019, 27:54 pm CST: "Merry Holiday
8 to you! For all your supposed, love and memes this
9 past year, we're have (six) a sale to show our thanks!
25% SITEWIDE...";
- 10 • March 2, 2020, 2:48 pm CST: "OH HAPPY DAY!!!
11 The try not to laugh shirt is back in stock. Buy one.
12 Spit on your friends. Be merry. BUY HERE IF YA
WANT...";
- 13 • April 24, 2020, 11:37 am CST: "Hey, thanks :) Thank
14 you so much for 7 million Subs on SMOSH PIT!! For
15 the next 7 hours take 20% off all SMOSH Pit Merch.
Thanks for bein (six) our favorite pizza place <3..."
- 16 • April 24, 2020, 11:37 am CST: Psst. We're having a
17 sale and y'all are the first to know. Take 20% off
18 everything in the store using the code
EARLYACCESS at checkout, eligible until 5/25pm
11:59 Pacific time..."; and
- 19 • June 29, 2020, 4:02 pm CST: "Hey friends! Get our
20 new merch for 10% off using the code GROOVY."

21 (A true and correct copy of screenshots reflecting those texts is attached as
22 Exhibit "A.")

23 35. The text messages solicited business for Defendants' merchandise
24 store.
25

1 36. The text messages were generic, pre-scripted and clearly sent out as
2 part of an automated text message “blast.”

3 37. As the subscriber and owner of that cell phone, Plaintiff found those
4 solicitation messages to be irritating, exploitative and invasive.
5

6 38. The messages were precisely the type of communications she sought
7 to avoid when she registered her number on the Do Not Call registry.

8 39. In its attempts to demonstrate that Defendants had “consent” to send
9 the aforementioned text messages to Plaintiff, on or around September 9, 2021,
10 Smosh’s counsel provided the data it had stored which led Smosh to send the
11 aforementioned solicitation messages. (A true and correct copy of an email from
12 Smosh’s counsel dated September 9, 2021 is attached as Exhibit “B”; A true and
13 correct copy of the redacted consumer data, enlarged for the purpose of legibility,
14 is attached as Exhibit “C.”)
15

16 40. Specifically, Defendants, through counsel, wrote “Craig: The number
17 you provided belongs to [REDACTED] who opted into automated messages
18 11/3/19.” (Ex. B.)
19

20 41. However, the data provided by counsel, reflects that the party who
21 “opted in” during November 2019 was 15 years old as of Sept. 8, 2021 (and 13
22 years old at the time the text messages were sent), and was born in 2006. (Exhibits
23 B and C.)
24
25

1 42. Defendants' text messages intruded upon the rights of Plaintiff and
2 the putative class members to be free from invasion of their seclusion.

3
4 **Class Allegations**

5
6 43. Pursuant to Fed. R. Civ. P. 23, Plaintiff brings this lawsuit as a class
7 action on behalf of themselves and all others similarly situated. This action
8 satisfies the requirements of numerosity, commonality, typicality, and adequacy
9 of representation. commonality, typicality, and adequacy of representation.
10

11 44. Defendants lack policies in place to assure that it has valid consent
12 before sending messages or making calls using an automatic telephone dialing
13 system to a cellular phone.

14
15 45. Accordingly, Defendants sent vast quantities of messages and placed
16 a high volume of calls to cellular phones without valid consent of the called party.

17 46. Furthermore, Defendants lack policies in place to assure it has valid
18 consent or a pre-existing business relationship with a party of majority age before
19 making telemarketing calls or text messages.
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1 47. Defendants also lack policies in place to assure that numbers that
2 receive telemarketing calls were not registered on the Do Not Call Registry.

3 48. Accordingly, Defendants sent vast quantities of messages and placed
4 a high volume of calls to numbers listed on the Do Not Call Registry without
5 consent or an existing business relationship.
6

7 49. Finally, Defendants place calls to residents of Texas without being
8 registered as a telephone solicitor with the Texas Secretary of State.
9

10 50. Plaintiff seeks to represent the following classes:

11 **ATDS Class:** For the period from four years prior to the
12 filing of this suit until the date a class is certified, all
13 persons in the United States who: (1) subscribe to cellular
14 telephones; (2) received one or more telephone call or text
15 message from Defendants (or someone acting on its behalf)
16 ; (3) where the party that purportedly “consented” to
17 receive the call(s)/text(s) was under the age of 18 at the
18 time the party purportedly offered that “consent”;

19 **Do Not Call Registry Class:** For the period from four
20 years prior to the filing of this suit until the date a class is
21 certified, all persons in the United States who: (1) subscribe
22 to cellular telephones; (2) received more than one telephone
23 call or text message from Defendants (or someone acting on
24 its behalf) on that phone during a 12-month period; (3)
25 whose phone numbers were listed on the Do Not Call
Registry for more than 31 days at the time the calls were
received; and (4) where the party that purportedly
“consented” to receive the solicitation texts was under the
age of 18 at the time the party purportedly offered that
“consent.”

Texas Solicitation Class: For two years prior to the filing
of this suit until the date a class is certified, all residents of
Texas who received a marketing call or text message from

1 Defendants or someone acting on its behalf) and at such
2 time Defendants had not obtained a registration certificate
3 from the Office of the Secretary of State.

4 51. Plaintiff reserves the right to add administrative subclasses, or to
5 amend the definition of the proposed class, during the lawsuit proceedings.

6 52. The members of the proposed classes are so numerous that joinder of
7 all members is impracticable. Plaintiff reasonably believes that hundreds or
8 thousands of people have been harmed by Defendants' actions. The names and
9 phone numbers of the members of the proposed class are readily identifiable
10 through records available to Defendants.

11 53. Most members of the proposed class have suffered damages in an
12 amount such that it would make filing separate lawsuits by individual members
13 economically infeasible.

14 54. Upon information and belief, Defendants have called or text
15 messaged and continue to call and text message individuals who are registered on
16 the National Do Not Call Registry. It is reasonable to expect that Defendants will
17 continue to make such calls and text messages absent this lawsuit.

18 55. Upon information and belief, Defendants have and continue to place
19 telemarketing calls and text messages without first obtaining a registration
20 certificate from the Office of the Secretary of State. It is reasonable to expect that
21 Defendants will continue to make such calls or text messages absent this lawsuit.

1 56. Common questions of law and fact exist as to all members of the
2 proposed class and predominate over any questions affecting only individual
3 members. The questions of law and fact common to the proposed class include,
4 but are not limited to, whether Defendants called or text messaged phone numbers
5 that were registered on the Do Not Call Registry, whether such calls violate the
6 TCPA, whether Defendants obtained a registration certificate from the Office of
7 the Secretary of State before placing telemarketing calls and/or text messages, and
8 whether such calls and/or text messages violate the Texas Business and
9 Commerce Code.
10
11

12 57. Plaintiff's claims are typical of the claims of the proposed class
13 members because their claims arise from the same practice that gives rise to the
14 claims of the members of the proposed class and is based on the same legal
15 theories.
16

17 58. Plaintiff and her counsel will fairly and adequately protect the
18 interests of the members of the proposed class. Plaintiff's interests do not conflict
19 with the interests of the proposed class she seeks to represent. Plaintiff has
20 retained lawyers who are competent and experienced in class action, TCPA
21 litigation and consumer law. Plaintiff's counsel has the resources to litigate this
22 class action, and Plaintiff and counsel are aware of their responsibilities to the
23
24
25

1 putative members of the class and will discharge those duties. Plaintiff reserve
2 the right to join other unnamed class members into this lawsuit.

3 59. A class action is superior to all individual lawsuits for this
4 controversy. Joinder of all proposed members of the proposed class in one action
5 is impracticable if not impossible and prosecuting hundreds or thousands of
6 individual actions is not feasible. The size of the individual claims is likely not
7 large enough to justify filing a separate action for each claim. For many, if not
8 most, members of the proposed class, a class action is the only procedural
9 mechanism that will allow recovery. Even if members of the proposed class had
10 the resources to pursue individual litigation, that method would be unduly
11 burdensome to the courts. Individual litigation could also result in inconsistent
12 adjudications.
13
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16 60. In contrast to numerous individual claims, a class action is superior
17 in that it will benefit the court and litigating parties through efficiency, economy
18 of scale and unitary adjudication resulting from supervision of the litigation by a
19 single court.
20

21 61. Questions of law and fact, particularly the propriety of calling cell
22 phone numbers registered on the National Do Not Call Registry, placing calls to
23 people without first obtaining a registration certificate from the Office of the
24 Secretary of State, predominate over questions affecting only individual members.
25

1 62. Defendants have acted or refused to act in accordance with the relief
2 sought by these classes, so final injunctive relief or corresponding declaratory
3 relief is appropriate with respect to the class as a whole.
4

5
6 **Count I - Violations of the Telephone Consumer Protection Act**
7 **47 U.S.C. § 227(b)**
8 ***ATDS Claim***

9 63. Plaintiff alleges by reference the allegations of the previous
10 paragraphs as if fully stated in this Count.

11 64. The TCPA prohibits placing calls using an automatic telephone
12 dialing system or automatically generated or prerecorded voice to a cellular
13 telephone except where the caller has the prior express written consent of the
14 called party to make such calls or where the call is made for emergency purposes.
15
16 47 U.S.C. § 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200.

17 65. The term "prior express written consent" as defined by the Code of
18 Federal Regulations means "an agreement, in writing, bearing the signature of the
19 person called that clearly authorizes the seller to deliver or cause to be delivered
20 to the person called advertisements or telemarketing messages using an automatic
21 telephone dialing system or an artificial or prerecorded voice, and the telephone
22 number to which the signatory authorizes such advertisements or telemarketing
23 messages to be delivered." 47 C.F.R. § 64.1200(f)(8)(i).
24
25

1 66. On information and belief, Defendants sent text message “blasts”
2 using an automatic telephone dialing system which dials or stores phone numbers
3 using a random or sequential number generator.

4 67. By placing automated text messages to the cell phones of Plaintiff
5 and the putative class members without first obtaining their prior express written
6 consent, Defendants violated the TCPA, including, but not limited to 47 U.S.C. §
7 227(b)(1).
8

9 68. The TCPA provides for a private right of action and statutory
10 damages of \$500 per violation, and up to \$1,500.00 if the violation is determined
11 to be willful. 47 U.S.C. § 227(b)(3).
12

13 69. On information and belief, Defendants placed automated text
14 messages to the cell phones of Plaintiff and the putative class members without
15 valid or legally recognized express written consent.
16

17 70. On information and belief, Defendants placed similar text messages
18 to hundreds if not thousands of wireless telephone numbers without valid consent,
19 using an automatic telephone dialing system.
20

21 WHEREFORE Plaintiff Kristen Hall, individually and on behalf of all
22 others similarly situated, request the Court grant the following relief:
23

- 24 a. Enter an order against Defendants, pursuant to Federal
25 Rule of Civil Procedure 23, certifying this action as a

1 class action and appointing Hall as the class
2 representative;

- 3 b. Enter an order appointing Kimmel & Silverman, P.C. as
4 class counsel;
- 5 c. Enter judgment in favor of Plaintiff and the putative class
6 for all damages available under the TCPA, including
7 statutory damages of \$500 per violation, or up to \$1,500
8 per violation if Smosh willfully violated section 227(b)
9 of the TCPA;
- 10 d. Enter judgment in favor of Plaintiff and the class
11 members enjoining Defendants from placing calls or
12 leaving messages utilizing an automatically generated or
13 pre-recorded voice;
- 14 e. Award Plaintiff and the class all expenses of this action,
15 and requiring defendant to pay the costs and expenses of
16 class notice and claims administration;
- 17 f. Award Plaintiff and the class members all reasonable
18 costs of prosecuting the action, including court costs and
19 investigation costs, deposition expenses, witness fees,
20 and attorney's fees; and
- 21 g. Award Plaintiff and the class members such further and
22 other relief the Court deems just and appropriate.

23 **Count II - Violations of the Telephone Consumer Protection Act**

24 **47 U.S.C. § 227(c)(5)**

25 ***Do-Not-Call Claim***

71. Plaintiff alleges by reference the allegations of the previous
paragraphs as if fully stated in this Count.

72. The TCPA provides that it is a violation of the law for a person
whose phone number is registered on the National Do Not Call Registry to receive
more than one call on their cell phone "within any 12-month period by or on

1 behalf of the same entity.” *See* 47 U.S.C. §§ 227(c)(1), (c)(5); 47 C.F.R. §
2 64.1200(c)(ii).

3 73. The penalty for each call placed in violation of the TCPA’s
4 restrictions on calling cell phone numbers registered on the National Do Not Call
5 Registry is \$500 per call and up to \$1,500 per call if the violation is determined to
6 be willful. *See* 47 U.S.C. §§ 227(c)(5).

8 74. In addition, the TCPA allows the Court to enjoin Defendants’
9 violations of the TCPA’s regulations prohibiting calls to cell phone numbers
10 registered on the National Do Not Call Registry. *See* 47 U.S.C. §§ 227(c)(5)(A).

12 75. By sending text messages to the cell phones of Plaintiff and the
13 putative class members after their numbers were registered on the National Do
14 Not Call Registry, Defendants violated the TCPA, including, but not limited to, 47
15 U.S.C. §§ 227(c)(5) and the TCPA’s corresponding regulations.

17 76. Defendants knew or should have known that Plaintiff and the
18 putative class members had their numbers registered on the Do Not Call Registry.

20 77. Defendants did not obtain valid express written consent from the
21 called parties.

22 78. Defendants did not have a legally recognizable existing business
23 relationship with the called parties.
24
25

1 79. Plaintiff and the putative class members are entitled to damages of
2 \$500.00 per violation for each text message sent by Defendants and up to
3 \$1,500.00 per violation if the Court finds that Defendants willfully violated the
4 TCPA.
5

6 **Demand for Judgment**

7 WHEREFORE Plaintiff Kristen Hall, individually and on behalf of all
8 others similarly situated, requests the Court grant the following relief:
9

- 10 a. Enter an order against Defendants, pursuant to Federal
11 Rule of Civil Procedure 23 *et seq.*, certifying this action
12 as a class action and appointing Plaintiff as the class
13 representatives;
- 14 b. Enter an order appointing Kimmel & Silverman as
15 counsel for the class;
- 16 c. Enter judgment in favor of Plaintiff and the putative class
17 for all damages available under the TCPA, including
18 statutory damages of \$500 per violation, or up to \$1,500
19 per violation if Defendants willfully violated section
20 227(c)(5) of the TCPA;
- 21 d. Enter a judgment in favor of Plaintiff and the putative
22 class that enjoins Defendants from violating the TCPA's
23 regulations prohibiting Defendants from calling numbers
24 registered on the National Do Not Call Registry;
- 25 e. Award Plaintiff and the class all expenses of this action,
and requiring Defendants to pay the costs and expenses
of class notice and administration; and
- f. Award Plaintiff and the class such further and other relief
the Court deems just and appropriate.

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**Count III – Violations of § 302.101 *et seq.* of
The Texas Business & Commercial Code
*Texas Solicitation Claim***

80. Plaintiff alleges by reference the allegations of the previous paragraphs as if fully stated in this Count.

81. Plaintiff received text messages from Defendants on her cell phone in Texas.

82. Defendants knew that the number for the called party was associated with a Texas resident.

83. Section 302.101 of the Texas Business & Commerce Code prohibits sellers from engaging in telephone solicitation from a location in this state or to a purchaser located in this state unless the seller obtains a registration certificate from the Office of the Secretary of State for the business location from which the solicitation is made.

84. Defendants violated § 302.101 of the Texas Business & Commercial Code when they engaged in continuous and repetitive telephone solicitation of Plaintiff without obtaining a registration certificate from the Office of the Secretary of State.

85. Section 302.302(a) of the Texas Business & Commerce Code provides that a person who violates this chapter is subject to a civil penalty of no more than \$5,000 for each violation. Furthermore, Section 302.302(d) provides

1 that the party bringing the action is also entitled to recover all reasonable cost of
2 prosecuting the action, including court costs and investigation costs, deposition
3 expenses, witness fees, and attorney's fees.
4

5 **Demand for Judgment**

6 WHEREFORE Plaintiff Kristen Hall, individually and on behalf of all
7 others similarly situated, requests the Court grant the following relief:
8

- 9 a. Enter an order against Defendants jointly and severally,
10 pursuant to Federal Rule of Civil Procedure 23, certifying this
11 action as a class action and appointing Hall as the class
12 representative;
- 13 b. Enter an order appointing Kimmel & Silverman, P.C. as class
14 counsel;
- 15 c. Enter judgment in favor of Plaintiff and the class members for
16 all damages available under Texas Commercial & Business
17 Code, including statutory damages of \$5,000 per violation;
- 18 d. Enter judgment in favor of Plaintiff and the class
19 members enjoining Defendants from placing marketing
20 calls before obtaining a registration certificate from the
21 Office of the Secretary of State for the business location
22 from which the solicitation is made;
- 23 e. Award Plaintiff and the class all expenses of this action,
24 and requiring defendant to pay the costs and expenses of
25 class notice and claims administration;
- 26 f. Award Plaintiff and the class members all reasonable
27 costs of prosecuting the action, including court costs and
28 investigation costs, deposition expenses, witness fees,
29 and attorney's fees; and
- 30 g. Award Plaintiff and the class members such further and
31 other relief the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff KRISTEN HALL, and all others similarly situated demand a jury trial in this case.

Respectfully submitted,

Kimmel & Silverman, P.C.

Dated: December 28, 2021

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