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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

BOBBY ETRI, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

AVIATOR NATION, INC.,

Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF THE TELEPHONE
CONSUMER PROTECTION
ACT, 47 U.S.C. §§ 227, ET SEQ.
(TCPA)**

JURY TRIAL DEMANDED

1 **CLASS ACTION COMPLAINT**

2 1. Plaintiff Bobby Etri, brings this action against Defendant, Aviator Nation,
3 Inc., to secure redress for violations of the Telephone Consumer Protection Act
4 (“TCPA”), 47 U.S.C. § 227.

5 **NATURE OF THE ACTION**

6 2. This is a putative class action pursuant to the Telephone Consumer
7 Protection Act, 47 U.S.C. §§ 227, *et seq.* (the “TCPA”).

8 3. Defendant is a retailer that sells clothin, apparel, and accessories online
9 and in store locations across the nation. To promote its services, Defendant engages in
10 aggressive unsolicited marketing, harming thousands of consumers in the process.

11 4. Through this action, Plaintiff seeks injunctive relief to halt Defendant’s
12 illegal conduct, which has resulted in the invasion of privacy, harassment, aggravation,
13 and disruption of the daily life of thousands of individuals. Plaintiff also seeks statutory
14 damages on behalf of himself and members of the Class, and any other available legal
15 or equitable remedies.

16 **JURISDICTION AND VENUE**

17 5. This Court has federal question subject matter jurisdiction over this action
18 pursuant to 28 U.S.C. § 1331, as the action arises under the Telephone Consumer
19 Protection Act, 47 U.S.C. §§ 227, *et seq.* (“TCPA”).

20 6. The Court has personal jurisdiction over Defendant and venue is proper
21 in this District because Defendant’s principal address is located in this district,
22 Defendant directs, markets, and provides its business activities to this District, and
23 because Defendant’s unauthorized marketing scheme was directed by Defendant to
24 consumers in this District.

25 **PARTIES**

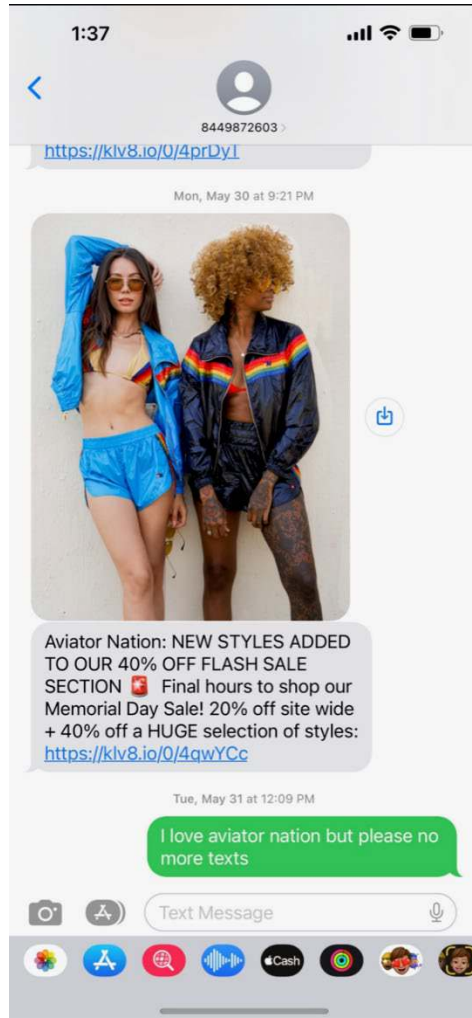
26 7. Plaintiff is a natural person who, at all times relevant to this action, was a
27 resident Miami-Dade County, Florida.

1 8. Defendant is a California corporation whose principal office is located at
2 6363 Regen Street, Huntington Park, CA 90255. Defendant directs, markets, and
3 provides its business activities throughout the United States, including throughout the
4 state of California.

5 9. Unless otherwise indicated, the use of Defendant’s name in this
6 Complaint includes all agents, employees, officers, members, directors, heirs,
7 successors, assigns, principals, trustees, sureties, subrogees, representatives, vendors,
8 and insurers of Defendant.

9 **FACTUAL ALLEGATIONS**

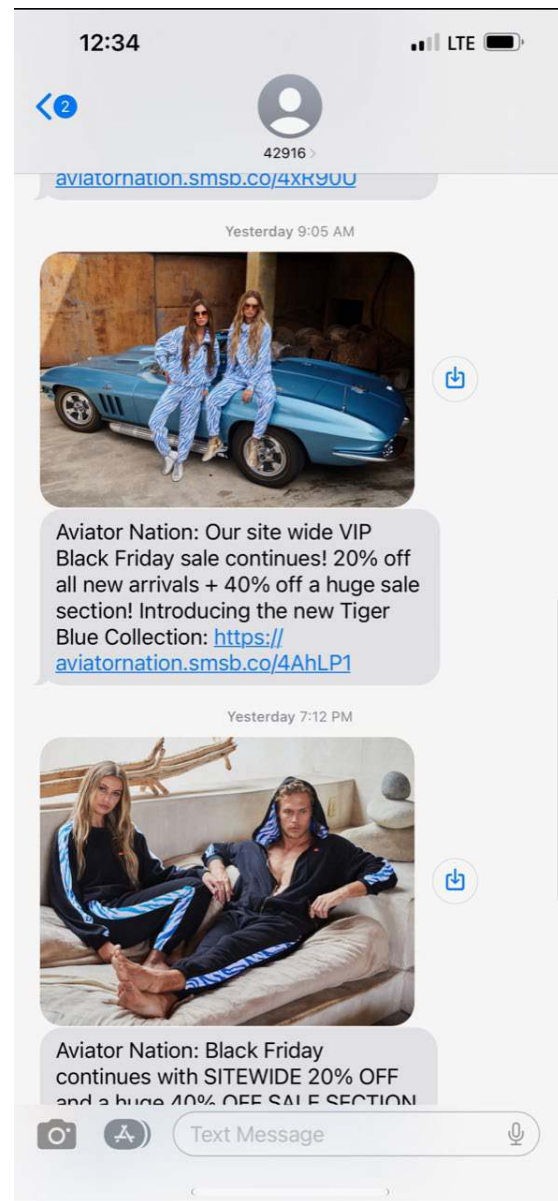
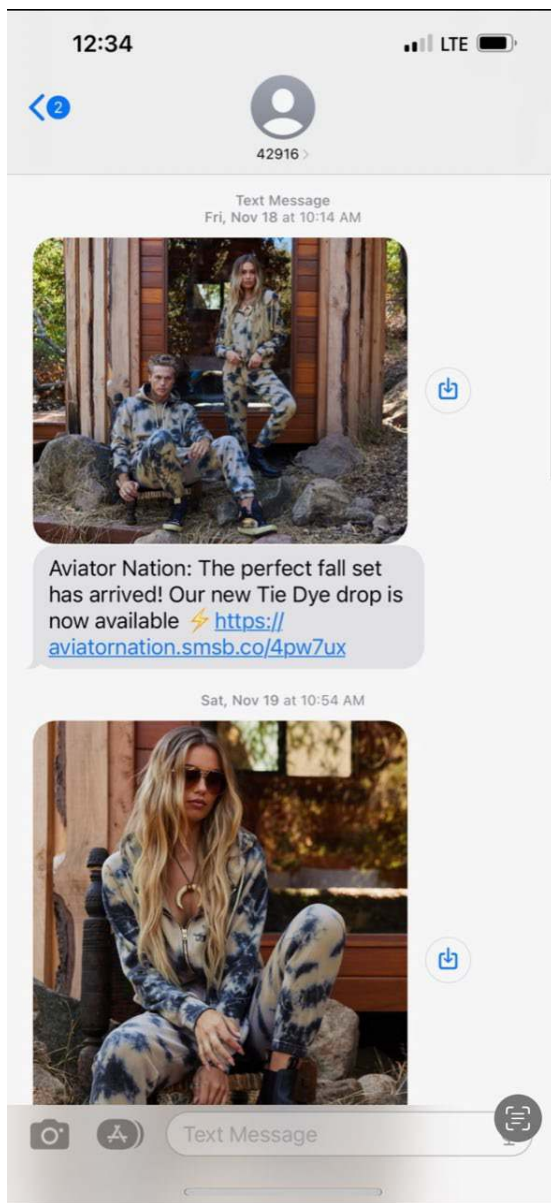
10 10. Over the past year, Defendant began sending telemarketing text messages
11 to Plaintiff’s cellular telephone number ending in 4449 (the “4449 Number”):

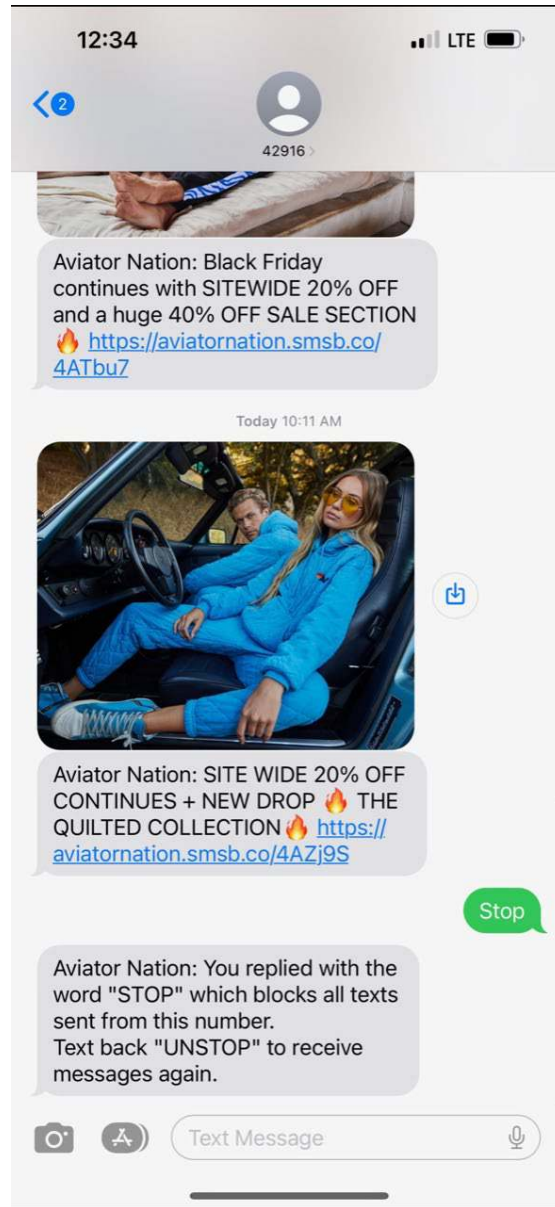


1 11. Defendant’s text messages did not include instructions on how to opt-out.

2 12. On May 31, 2022, Plaintiff responded to Defendant with “...please no
3 more texts” in an attempt to opt-out of any further text message communications with
4 Defendant.

5 13. Despite Plaintiff’s use of clear opt-out language, Defendant ignored
6 Plaintiff’s opt-out demand and sent Plaintiff dozens more telemarketing text message
7 up through November 2022 including but not limited to the below:





14. Upon advice from counsel, Plaintiff texted only the word “Stop” to Defendant.

15. Defendant’s text messages were transmitted to Plaintiff’s cellular telephone, and within the time frame relevant to this action.

16. Defendant’s text messages constitute telemarketing because they encouraged the future purchase or investment in property, goods, or services, i.e., selling Plaintiff clothing and apparel.

1 17. The information contained in the text message advertises Defendant's
2 various discounts and promotions, which Defendant sends to promote its business.

3 18. Defendant sent or caused to be sent the subject texts within this judicial
4 district and, therefore, Defendant's violation of the TCPA occurred within this district.
5 Upon information and belief, Defendant caused other text messages to be sent to
6 individuals residing within this judicial district.

7 19. Defendant's texts were not made for an emergency purpose nor to collect
8 on a debt pursuant to 47 U.S.C. § 227(b)(1)(B).

9 20. To the extent that Defendant had any consent to contact Plaintiff, that
10 consent was expressly revoked when Plaintiff responded "...please no more texts" on
11 May 31, 2022.

12 21. The facts alleged suggest that Defendant does not have a written policy
13 for maintaining an internal do not call list pursuant to 47 U.S.C. § 64.1200(d)(1).

14 22. The facts alleged suggest that Defendant does not inform and train its
15 personnel engaged in telemarketing in the existence and the use of any internal do not
16 call list pursuant to 47 U.S.C. 64.1200(d)(2).

17 23. Plaintiff is the subscriber and sole user of the 4449 Number and is
18 financially responsible for phone service to the 4449 Number.

19 24. The text messages originated from telephone numbers 42916 and
20 8449872603, both numbers which upon information and belief are owned and operated
21 by or on behalf of Defendant.

22 25. Defendant's unsolicited text messages caused Plaintiff actual harm,
23 including invasion of his privacy, aggravation, annoyance, intrusion on seclusion,
24 trespass, and conversion. Defendant's text messages also inconvenienced Plaintiff and
25 caused disruption to his daily life.

26 26. Defendant's unsolicited text messages caused Plaintiff actual harm.
27 Specifically, Plaintiff estimates that he has wasted fifteen to thirty seconds reviewing
28

1 each of Defendant’s unwanted messages. Each time, Plaintiff had to stop what he was
2 doing to either retrieve his phone and/or look down at the phone to review the
3 message.

4 27. Next, Plaintiff wasted approximately fifteen minutes locating and
5 retaining counsel for this case in order to stop Defendant’s unwanted calls.

6 28. In all, Defendant’s violations of the TCPA caused Plaintiff to waste at
7 least fifteen minutes of his time in addressing and attempting to stop Defendant’s
8 solicitations.

9 **CLASS ALLEGATIONS**

10 **PROPOSED CLASS**

11 29. Plaintiff brings this case as a class action pursuant to Fed. R. Civ. P. 23,
12 on behalf of himself and all others similarly situated.

13 30. Plaintiff brings this case on behalf of the Class defined as follows:

14 **All persons within the United States who, within the**
15 **four years prior to the filing of this Complaint, were**
16 **sent a text message from Defendant or anyone on**
17 **Defendant’s behalf, to said person’s cellular**
telephone number *after* making a request to
Defendant to not receive future text messages.

18 31. Defendant and its employees or agents are excluded from the Class.
19 Plaintiff does not know the number of members in the Class but believes the Class
20 members number in the several thousands, if not more.

21 **NUMEROSITY**

22 32. Upon information and belief, Defendant has placed violative calls to
23 cellular telephone numbers belonging to thousands of consumers throughout the
24 United States after they have revoked consent to be contacted. The members of the
25 Class, therefore, are believed to be so numerous that joinder of all members is
26 impracticable.

COUNT I
Violations of the TCPA, 47 U.S.C. § 227(c)(2)
(On Behalf of Plaintiff and the Class)

40. Plaintiff re-alleges and incorporates the foregoing allegations as if fully set forth herein.

41. The TCPA provides that any “person who has received more than one telephone call within any 12-month period by or on behalf of the same entity in violation of the regulations prescribed under this subsection may” bring a private action based on a violation of said regulations, which were promulgated to protect telephone subscribers’ privacy rights to avoid receiving telephone solicitations to which they object. 47 U.S.C. § 227(c)(5).

42. Under 47 C.F.R. § 64.1200(d), “[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. The procedures instituted must meet certain minimum standards, including:

“(3) Recording, disclosure of do-not-call requests. If a person or entity making a call for telemarketing purposes (or on whose behalf such a call is made) receives a request from a residential telephone subscriber not to receive calls from that person or entity, the person or entity must record the request and place the subscriber’s name, if provided, and telephone number on the do-not call list at the time the request is made. Persons or entities making calls for telemarketing purposes (or on whose behalf such calls are made) must honor a residential subscriber’s do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request

(6) Maintenance of do-not-call lists. A person or entity making calls for telemarketing purposes must maintain a record of a consumer’s request not to receive further telemarketing calls. A do-not-call request must be honored for 5 years from the time the request is made.”

47 C.F.R. § 64.1200(d)(3), (6)

1 Dated: November 28, 2022

Respectfully submitted,

2
3 By: */s/ Scott Edelsberg*

4 **EDELSBERG LAW, P.A.**

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