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12 *Attorneys for Plaintiff and the alleged Class*

13 **IN THE UNITED STATES DISTRICT COURT**  
14 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

15 **EDUARDO MUNOZ**, individually  
16 and on behalf of all others similarly  
situated,

17 Plaintiff,

18 v.

19 **SCHOOLADVISOR, LLC, d/b/a**  
20 **DEGREESEARCH.ORG**, a Delaware  
limited liability company,

21 Defendant.  
22

Case No.

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

23  
24 Plaintiff Edwardo Munoz (“Munoz” or “Plaintiff”) brings this Class Action  
25 Complaint and Demand for Jury Trial (“Complaint”) against Defendant  
26 Schooladvisor, LLC d/b/a DegreeSearch.org (“DegreeSearch” or “Defendant”) to  
27 stop its practice of placing unsolicited telemarketing text message calls to cellular  
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1 telephone users nationwide without obtaining prior express written consent, and to  
2 obtain redress for all persons similarly injured by its conduct. Plaintiff, for his  
3 Complaint, alleges as follows upon personal knowledge as to himself and his own  
4 acts and experiences, and, as to all other matters, upon information and belief,  
5 including investigation conducted by his attorneys.

6 1. The Telephone Consumer Protection Act, 47 U.S.C. § 227, *et seq.*  
7 (“TCPA” or “Act”), and its implementing regulations, 47 C.F.R. § 64.1200, *et seq.*,  
8 prohibit companies, such as Defendant, from placing text message calls using an  
9 automatic telephone dialing system (“ATDS”) to cellular telephones without first  
10 obtaining prior express written consent. In this case, DegreeSearch has violated, and  
11 continues to violate, the TCPA and its regulations by placing SMS messages to  
12 cellular phone subscribers who have not provided prior express written consent to  
13 receive such text messages.

#### 14 **PARTIES**

15 2. Plaintiff Edwardo Munoz is a natural person and a resident of Merced,  
16 Merced County, California.

17 3. Defendant Schooladvisor, LLC d/b/a DegreeSearch.org is a limited  
18 liability company organized and existing under the laws of the State of Delaware  
19 with a principal place of business located at 4800 140th Avenue N, Suite 101,  
20 Clearwater, Florida 33762. Defendant conducts business throughout the United  
21 States, the State of California, and this District.

#### 22 **JURISDICTION AND VENUE**

23 4. This Court has jurisdiction over the subject matter of this action under  
24 28 U.S.C. § 1331, as the action arises under the TCPA, which is a federal statute.  
25 This Court also has jurisdiction under the Class Action Fairness Act (“CAFA”), 28  
26 U.S.C. § 1332, because the alleged Class consists of over 100 persons, there is  
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1 minimal diversity, and the claims of the class members when aggregated together  
2 exceeds \$5 million. Further, none of the exceptions to CAFA apply.

3 5. This Court has personal jurisdiction over Defendant because Defendant  
4 conducts a significant amount of business in this District, directed the text messages  
5 at issue to Plaintiff who is located in this District, and because the wrongful conduct  
6 giving rise to this case occurred in, was directed to, and/or emanated from this  
7 District.

8 6. Venue is proper in this District under 28 U.S.C. § 1391(b)(2) because  
9 Defendant conducts a significant amount of business within this District and  
10 because the wrongful conduct giving rise to this case occurred in, was directed to,  
11 and/or emanated from this District.

12 **COMMON FACTUAL ALLEGATIONS**

13 7. DegreeSearch operates an online website that allows prospective  
14 students to input information about the type of degree or subject matter they are  
15 interested in and claims that DegreeSearch may be able to help students obtain  
16 grants.

17 8. In an effort to boost DegreeSearch's business, Defendant utilized bulk  
18 text messaging to reach consumers.

19 9. The text messages were for telemarketing purposes and offered,  
20 advertised, and announced the availability of DegreeSearch's goods or services.

21 10. Bulk text messaging, or SMS messaging, has emerged as a direct  
22 method of communicating with consumers. The term "Short Message Service" or  
23 "SMS" is a messaging system that allows cellular telephone subscribers to use their  
24 cellular telephones to send and receive short text messages, usually limited to 160  
25 characters. An SMS message is a text message call directed to a wireless device  
26 through the use of the telephone number assigned to the device.

1           11. When an SMS message call is successfully made, the recipient's cell  
2 phone rings or vibrates, alerting him or her that a call is being received. As cellular  
3 telephones are mobile and are frequently carried on their owner's person, calls to  
4 cellular telephones, including SMS messages, may be received by the called party  
5 virtually anywhere worldwide and instantaneously.

6           12. In sending the text messages at issue in this Complaint, Defendant  
7 utilized an automatic telephone dialing system ("ATDS"). Specifically, the  
8 hardware and software used by Defendant (or its agent) has the capacity to store,  
9 produce, and dial random or sequential numbers, and/or receive and store lists of  
10 telephone numbers, and to dial such numbers, en masse, in an automated fashion  
11 without human intervention. Defendant's automated dialing equipment includes  
12 features substantially similar to a predictive dialer, inasmuch as it is capable of  
13 making numerous text message calls simultaneously (all without human  
14 intervention).

15           13. Unfortunately for consumers, DegreeSearch fails to obtain consumers'  
16 prior express written consent to place the text messages as required by the TCPA.

17           14. The text messages were made by or on behalf of Defendant, with  
18 Defendant's knowledge and approval. Defendant has knowingly received the  
19 benefit of the calls and has ratified the making of the calls.

20           15. At all times material to this Complaint, Defendant was and is fully  
21 aware that unsolicited telemarketing text messages are being made to consumers'  
22 cellular telephones through its own efforts and through the efforts of its agents.

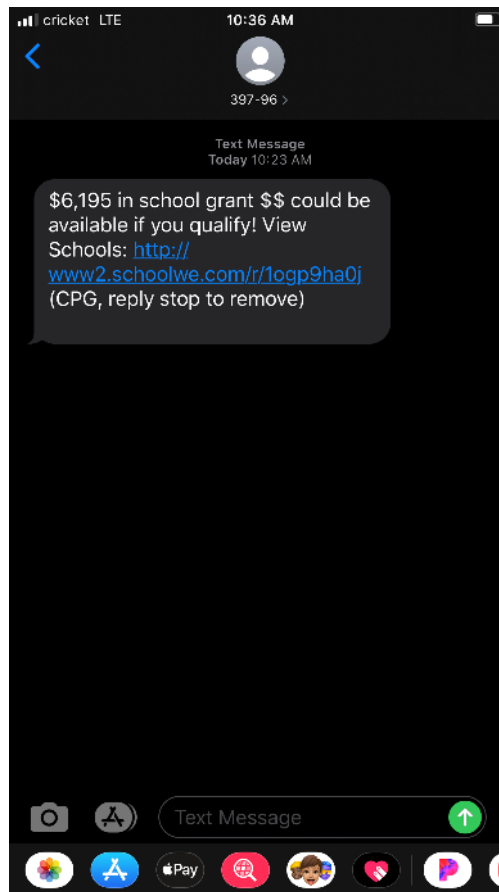
23           16. Defendant knowingly made (and continues to make) unsolicited  
24 telemarketing text messages without the prior express written consent of the  
25 recipients. In so doing, Defendant not only invaded the personal privacy of Plaintiff  
26 and members of the putative Class, but also intentionally and repeatedly violated  
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1 the TCPA.

2 **FACTS SPECIFIC TO PLAINTIFF MUNOZ**

3 17. Plaintiff is the owner and customary user of the cellular telephone  
4 number ending in 6617.

5 18. On February 2, 2020, at 10:23 AM, Plaintiff received an unsolicited  
6 text message to his cellphone from Defendant using SMS shortcode 397-96, which  
7 read, “\$6,195 in school grant \$\$ could be available if you qualify! View Schools:  
8 <http://www2.schoolwe.com/r/1ogp9ha0j> (CPG, reply stop to remove)”. A  
9 screenshot of the February 2nd text message is reproduced below:



25 19. On February 10, 2020, at 10:28 AM, Plaintiff received a similar text  
26 message from the same shortcode 397-96, which read, “Edwardo, did you get a  
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1 chance to explore your class options? View matches here –

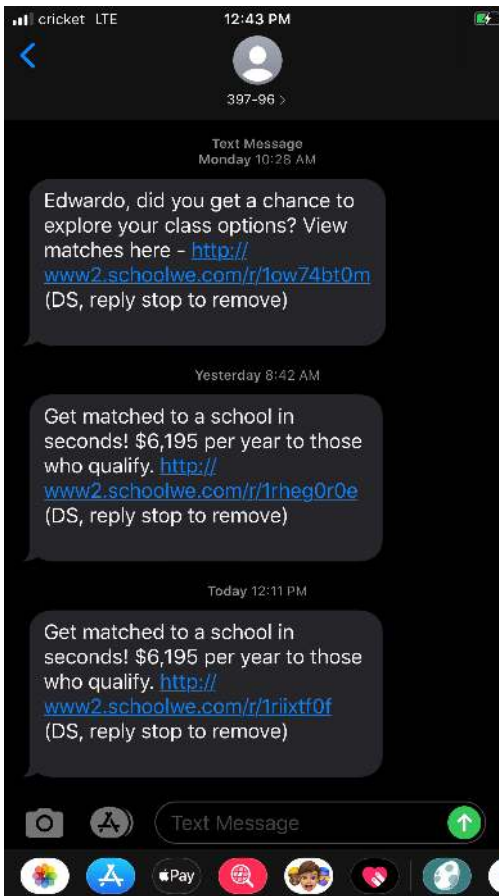
2 <http://www2.schoolwe.com/r/1ow74bt0m> (DS, reply stop to remove)”.

3 20. On February 13, 2020, at 8:42 AM, Plaintiff received another text  
4 message from the same shortcode 397-96, which read, “Get matched to a school in  
5 seconds! \$6,195 per year to those who qualify.

6 <http://www2.schoolwe.com/r/1rheg0r0e> (DS, reply stop to remove)”.

7 21. On February 14, 2020, at 12:11 PM Plaintiff received a text message  
8 from the short code 397-96, which was identical to the February 13th text message.  
9 The text message read, “Get matched to a school in seconds! \$6,195 per year to  
10 those who qualify. <http://www2.schoolwe.com/r/1rheg0r0e> (DS, reply stop to  
11 remove)”.

12 22. A screenshot of the February 10th, 13th, and 14th text messages is  
13 reproduced below:







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**No Consent Class:** All persons in the United States who (1) from the date four years prior to the filing of this Complaint through the date notice is sent to the Class; (2) received at least one text message from Defendant, or a third person acting on behalf of Defendant; (3) on the person's cellular telephone; (4) for the purpose of selling Defendant's products or services; (5) using the same dialing system that was used to send the text messages to Plaintiff; and (6) for whom Defendant claims it obtained prior express written consent in the same manner as Defendant claims it supposedly obtained prior express written consent to send text messages to Plaintiff.

32. The following individuals are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, its subsidiaries, parents, successors, predecessors, and any entity in which Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) Plaintiff's attorneys and Defendant's attorneys; (4) persons who properly execute and file a timely request for exclusion from the Class; (5) the legal representatives, successors or assigns of any such excluded persons; and (6) persons whose claims against Defendant have been fully and finally adjudicated and/or released. Plaintiff anticipates the need to amend the class definitions following appropriate discovery.

33. **Numerosity:** The exact size of the Class is unknown and not available to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendant sent autodialed text messages to thousands of consumers who fall into the definition of the defined Class. Class members can be identified by reviewing Defendant's call records.

34. **Typicality:** Plaintiff's claims are typical of the claims of the other members of the Class, in that Plaintiff and the members of the Class sustained damages arising out of Defendant's uniform wrongful conduct. Defendant has no defenses unique to Plaintiff.



1           35.    **Adequate Representation:** Plaintiff will fairly and adequately  
2 represent and protect the interests of the Class and has retained counsel competent  
3 and experienced in class actions. Plaintiff has no interests antagonistic to those of  
4 the Class, and Defendant has no defenses unique to Plaintiff. Plaintiff and his  
5 counsel are committed to vigorously prosecuting this action on behalf of the  
6 members of the Class and have the financial resources to do so. Neither Plaintiff nor  
7 his counsel has any interest adverse to the Class.

8           36.    **Commonality and Predominance:** There are several questions of law  
9 and fact common to the claims of Plaintiff and the Class, and those questions  
10 predominate over any questions that may affect individual members of the Class.  
11 Common questions for the Class include, but are not necessarily limited to the  
12 following:

- 13                   (a)    Whether Defendant's conduct violated the TCPA;
- 14                   (b)    Whether Defendant systematically sent unsolicited text  
15                   messages to consumers absent prior express written consent;
- 16                   (c)    Whether Defendant sent the text messages using an automatic  
17                   telephone dialing system;
- 18                   (d)    Whether Plaintiff and the class members are entitled to statutory  
19                   damages; and
- 20                   (e)    Whether Plaintiff and the class members are entitled to treble  
21                   damages based on the willfulness of Defendant's conduct.

22           37.    **Superiority & Manageability:** This case is also appropriate for class  
23 certification under Rule 23(b)(3) because class proceedings are superior to all other  
24 available methods for the fair and efficient adjudication of this controversy. Joinder  
25 of all parties is impracticable, and the damages suffered by the individual members  
26 of the Class will likely be relatively small, especially given the burden and expense  
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1 (B) The person is not required to sign the agreement (directly or  
2 indirectly), or agree to enter into such an agreement as a condition of  
purchasing any property, goods, or services.

3 41. Further, Defendant and/or its agent transmitted unsolicited  
4 telemarketing text message calls to cellular telephone numbers belonging to  
5 Plaintiff and the other members of the No Consent Class using equipment that,  
6 upon information and belief, had the capacity to store or produce telephone  
7 numbers to be called using a random or sequential number generator and/or receive  
8 and store lists of phone numbers, and to dial such numbers, *en masse*, without  
9 human intervention.

10 42. The telephone dialing equipment utilized by Defendant and/or its  
11 agent, which is substantially similar to a predictive dialer, dialed numbers from a  
12 list, or dialed numbers from a database of telephone numbers, in an automatic and  
13 systematic manner.

14 43. These text messages were sent randomly and/or made *en masse* and  
15 without the prior express written consent of the Plaintiff and the other members of  
16 the No Consent Class to receive such wireless spam.

17 44. Based on such conduct, Defendant has violated 47 U.S.C. §  
18 227(b)(1)(A)(iii).

19 45. As a result of such conduct, Plaintiff and the other members of the No  
20 Consent Class are each entitled to, under 47 U.S.C. § 227(b)(3)(B), a minimum of  
21 \$500.00 in damages for each violation of such act.

22 46. In the event that the Court determines that Defendant's conduct was  
23 willful and knowing, it may, under 47 U.S.C. § 227(b)(3)(C), treble the amount of  
24 statutory damages recoverable by Plaintiff and the other members of the No  
25 Consent Class.

26 47. Plaintiff is also entitled to injunctive relief and corresponding  
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1 declaratory relief to ensure that the calls stop.

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3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff Edwardo Munoz, individually and on behalf of the  
5 Class, prays for the following relief:

6 A. An order certifying the No Consent Class as defined above,  
7 appointing Plaintiff Edwardo Munoz as the representative of the Class, and  
8 appointing his counsel as Class Counsel;

9 B. An award of actual monetary loss from such violations or the  
10 sum of five hundred dollars (\$500.00) for each violation, whichever is greater  
11 all to be paid into a common fund for the benefit of the Plaintiff and the Class  
12 Members;

13 C. An order declaring that Defendant's actions, as set out above,  
14 violate the TCPA;

15 D. A declaratory judgment that Defendant's telephone calling  
16 equipment constitutes an automatic telephone dialing system under the  
17 TCPA;

18 E. An injunction requiring Defendant to cease all unsolicited text  
19 messaging activities, and otherwise protecting the interests of the Class;

20 F. An award of reasonable attorneys' fees and costs to be paid out  
21 of the common fund prayed for above;

22 G. An award of treble damages if willfulness is shown; and

23 H. Such other and further relief that the Court deems reasonable  
24 and just.

25 **JURY DEMAND**

26 Plaintiff requests a trial by jury of all claims that can be so tried.  
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Dated: March 26, 2020

Respectfully submitted,

**EDUARDO MUNOZ**, individually and on behalf of all others similarly situated,

By: s/ Rebecca Davis  
One of Plaintiff's Attorneys

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\* *Pro Hac Vice admission to be sought*