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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

KRISTI LEE ALLRED, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

NEW LEAF NATURALS,

Defendant.

Case No. _____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 Plaintiff Kristi Lee Allred (“Plaintiff”), individually and on behalf of all others similarly
2 situated, alleges the following upon information and belief against New Leaf Naturals
3 (“Defendant”) regarding Defendant’s violations of the Telephone Consumer Protection Act, 47
4 U.S.C. § 227 (the “TCPA”). Plaintiff brings this Complaint to: (1) stop Defendant’s practice of
5 sending text messages using an automatic telephone dialing system (“ATDS”) to the cellular
6 telephones of consumers nationwide without their prior express written consent; (2) stop
7 Defendant’s practice of sending text messages using an artificial or prerecorded message to the
8 cellular telephones of consumers nationwide without their prior express written consent; (3) enjoin
9 Defendant from continuing to send text messages using an ATDS to consumers who did not
10 provide their prior express written consent or who revoked their prior express written consent to
11 receive them; and (4) obtain redress for all persons injured by its conduct.

12 **JURISDICTION AND VENUE**

13 1. This Court has subject matter jurisdiction over this action pursuant to the Class
14 Action Fairness Act of 2005, Pub. L. No. 109-2 Stat. 4 (“CAFA”), which, *inter alia*, amends 28
15 U.S.C. § 1332, at new subsection (d), conferring federal jurisdiction over class actions where, as
16 here: (a) there are 100 or more members in the proposed class; (b) some members of the proposed
17 Class have a different citizenship from Defendant; and (c) the claims of the proposed class
18 members exceed the sum or value of five million dollars (\$5,000,000) in aggregate. *See* 28 U.S.C.
19 § 1332(d)(2) and (6).

20 2. This Court also has federal question jurisdiction pursuant to 28 U.S.C. § 1331
21 because this action involves violations of a federal statute, the TCPA.

22 3. This Court has personal jurisdiction over Defendant because Defendant’s wrongful
23 conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

24 4. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant’s
25 wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this
26 District.

PARTIES

1
2 5. Plaintiff Kristi Lee Allred is, and at all times mentioned herein was, a resident of
3 Fairfield, California, and a citizen of the State of California.

4 6. Defendant New Leaf Naturals is a corporation organized under the laws of Florida,
5 with a principal place of business at 1802 N Howard Avenue, Suite 4587, Tampa, Florida 33607.
6 Defendant conducts business in this District and throughout the United States.

7 **FACTS COMMON TO ALL CAUSES OF ACTION**

8 **A. The TCPA Of 1991**

9 7. In 1991, Congress enacted the TCPA in response to a growing number of consumer
10 complaints regarding certain telemarketing practices.

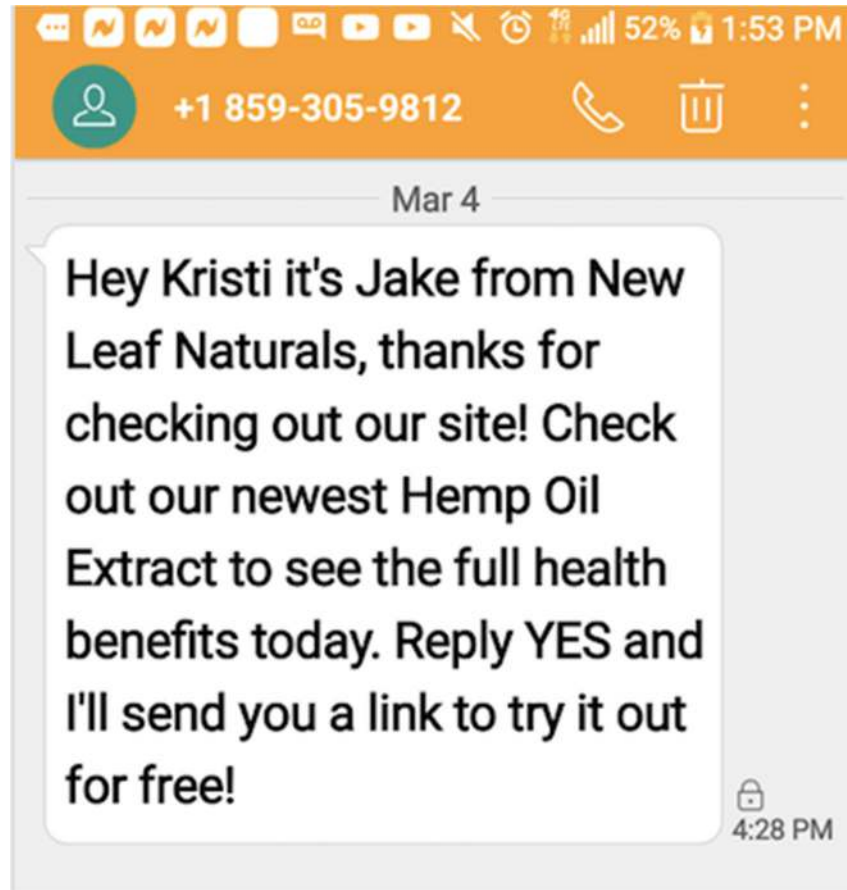
11 8. The TCPA regulates, among other things, the use of automated telephone
12 equipment, or “autodialers,” defined as equipment which “has the capacity . . . (a) to store or
13 produce telephone numbers to be called, using a random or sequential number generator; and (b) to
14 dial such numbers.” 47 U.S.C. § 227(a)(1). Specifically, the plain language of section
15 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless number in the
16 absence of an emergency or the prior express consent of the called party. The same section forbids
17 making calls using an “artificial or prerecorded voice.” *Id.*

18 9. The FCC has issued rulings clarifying that in order to obtain an individual’s consent,
19 a clear, unambiguous, and conspicuous written disclosure must be provided by the individual.
20 2012 FCC Order, 27 FCC Rcd. at 1839 (“[R]equiring prior written consent will better protect
21 consumer privacy because such consent requires conspicuous action by the consumer—providing
22 permission in writing—to authorize autodialed or prerecorded telemarketing calls. . .”).

23 10. The FCC has also ruled that consumers are entitled to the same protections for text
24 messages as they are for calls to wireless numbers. *See Satterfield v. Simon & Schuster, Inc.*, 569
25 F.3d 946, 952 (9th Cir. 2009) (“The FCC has subsequently confirmed that the prohibition on using
26 automatic telephone dialing systems to make calls to wireless phone numbers applies to text
27 messages (e.g. phone-to-phone [short message service]), as well as voice calls.”) (internal
28 quotations omitted).

B. Defendant’s Text Messages To Plaintiff And Class Members

11. On or about March 4, 2020, Defendant sent a telemarketing text messages (the “Text”) to Plaintiff’s cellular telephone number (XXX) XXX-2428 (the “2428 Number”). A screenshot of the Text is below:



12. Plaintiff received the Texts while in Fairfield.

13. Upon information and belief, the Texts originated from a telephone number owned and operated by Defendant.

14. Defendant sent the Texts using an automatic telephone dialing system (“ATDS”) without obtaining Plaintiff’s prior express written consent.

15. The Texts were impersonal and generic. This is a hallmark of an ATDS. According to the Federal Communications Commission and experts on telecommunications equipment, an ATDS has the inherent present capacity to generate random or sequential telephone numbers and to then text those numbers.

1 24. The disposition of the claims in a class action will provide substantial benefit to the
2 parties and the Court in avoiding a plethora of identical suits.

3 25. The proposed Class can be easily identified through records maintained by
4 Defendant.

5 26. There are well defined, nearly identical, questions of law and fact affecting all
6 parties. The questions of law and fact involving the class claims predominate over questions which
7 may affect individual members of the proposed class. Those common question of law and fact
8 include, but are not limited to, the following:

- 9 a. Whether Defendant sent text messages to Plaintiff and class members using an
10 ATDS and/or an artificial or prerecorded text message without their prior
11 express written consent;
- 12 b. Whether Defendant's conduct was knowing and/or willful;
- 13 c. Whether Defendant is liable for damages, and the amount of such damages; and
- 14 d. Whether Defendant should be enjoined from engaging in such conduct in the
15 future.

16 27. **Typicality.** Plaintiff asserts claims that are typical of each member of the Class
17 because they are all persons who received text messages on their cellular telephones using an
18 ATDS without their prior express written consent. Plaintiff will fairly and adequately represent
19 and protect the interests of the proposed class, and has no interests which are antagonistic to any
20 member of the proposed class.

21 28. **Adequacy of Representation.** Plaintiff will fairly and adequately represent and
22 protect the interests of the proposed class, and has no interests which are antagonistic to any
23 member of the proposed Class.

24 29. Plaintiff has retained counsel experienced in handling class action claims involving
25 violations of federal and state consumer protection statutes.

26 30. **Superiority.** A class action is the superior method for the fair and efficient
27 adjudication of this controversy.

28 31. Classwide relief is essential to compel Defendant to comply with the TCPA.

- 1 d. An award of attorneys' fees and costs to counsel for Plaintiff and the proposed
2 Class;
- 3 e. An order certifying this action to be a proper class action pursuant to Federal Rule
4 of Civil Procedure 23, establishing appropriate the Class, finding that Plaintiff is a
5 proper representative of the Class, and appointing the lawyers and law firm
6 representing Plaintiff as counsel for the Class;
- 7 f. Such other relief as the Court deems just and proper.

8 **DEMAND FOR JURY TRIAL**

9 Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiff demands a trial by jury of any
10 and all issues in this action so triable as of right.

11 Dated: March 26, 2020

BURSOR & FISHER, P.A.

12 By: /s/ L. Timothy Fisher

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