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9 **UNITED STATES DISTRICT COURT**

10 **DISTRICT OF ARIZONA**

11
12 April Stewart, individually and on
13 behalf of all others similarly situated,

14 *Plaintiff,*

15 v.

16 Snow Joe, LLC, a New York
17 company,

18 *Defendant.*
19

CLASS ACTION COMPLAINT

JURY TRIAL DEMAND

20
21 Plaintiff April Stewart (“Plaintiff” or “Stewart”) brings this Class Action
22 Complaint and Demand for Jury Trial against Defendant Snow Joe, LLC (“Snow Joe” or
23 “Defendant”) to stop Snow Joe from violating the Telephone Consumer Protection Act by
24 sending unsolicited autodialed text messages to consumers, and to otherwise obtain
25 injunctive and monetary relief for all persons injured by Snow Joe’s conduct. Plaintiff, for
26 this Complaint, allege as follows upon personal knowledge as to herself and her own acts
27 and experiences, and, as to all other matters, upon information and belief, including
28 investigation conducted by her attorneys.

PARTIES

1
2 1. Plaintiff Stewart is a Tucson, Arizona resident.

3 2. Defendant Snow Joe is a New York incorporated and New Jersey
4 headquartered limited liability company. Defendant conducts business throughout
5 Arizona and the United States.

6 **JURISDICTION AND VENUE**

7 3. This Court has federal question subject matter jurisdiction over this action
8 under 28 U.S.C. § 1331, as the action arises under the Telephone Consumer Protection
9 Act, 47 U.S.C. § 227 (“TCPA”).

10 4. This Court has personal jurisdiction over Defendant and venue is proper in
11 this District under 28 U.S.C. § 1391(b) because Defendant directed its TCPA violative text
12 message to Plaintiff in this District.

13 **PLAINTIFF’S ALLEGATIONS**

14 5. Snow Joe is a distributor of snow blowers, lawn mowers, and other tools.

15 6. Snow Joe markets its products to consumers using unsolicited, autodialed
16 text messages.

1 7. For example, on February 25, 2020, Plaintiff received an unsolicited, text
2 message to her cell phone number from Snow Joe using short code 296-91:



15 8. Plaintiff has never provided her consent to Snow Joe to send her text
16 messages using an automatic telephone dialing system or to otherwise contact her.

17 9. Snow Joe’s unsolicited text was a nuisance that aggravated Plaintiff, wasted
18 her time, invaded her privacy, diminished the value of the cellular services she paid for,
19 caused her to temporarily lose the use and enjoyment of her phone, and caused wear and
20 tear to her phone’s data, memory, software, hardware, and battery components.

21 10. In sending the unsolicited text message at issue, Snow Joe, or a third party
22 acting on its behalf, utilized an automatic telephone dialing system; hardware and/or
23 software with the capacity to store or produce cellular telephone number to be called, using
24 a random or sequential number generator, or to dial telephone numbers from preloaded
25 lists. This is evident from the circumstances surrounding the text message, including the
26 text message’s commercial and generic content, that the text message was unsolicited, and
27 that the text message was sent from a short code.

1 11. On information and belief, Snow Joe, or a third-party acting on its behalf,
2 sent substantively identical unsolicited text messages *en masse* to the cellular telephone
3 numbers of thousands of consumers. This is evident from the text message's commercial
4 and generic content, that the text message was unsolicited, and that it was sent using an
5 automatic telephone dialing system.

6 12. To the extent the text message was sent on Snow Joe's behalf to consumers,
7 Snow Joe provided the third-party access to its records, authorized use of its trade name,
8 authorized use of its short code, controlled the content of the messages, and knew of, but
9 failed to stop, the sending of the text message in violation of the TCPA.

10 13. Accordingly, Plaintiff brings this action pursuant to Federal Rules of Civil
11 Procedure 23(b)(2) and 23(b)(3) on behalf of herself and all others similarly situated and
12 seeks certification of the following Class:

13 **ATDS Class:** All persons who, on or after four years prior to the filing of the
14 initial complaint in this action through the date of class certification, (1) were
15 sent a text message to their cellular telephone number by or on behalf of
16 Snow Joe, (2) using a dialing system substantially similar dialing system as
17 used to text message Plaintiff, (3) for a substantially similar reason as Snow
18 Joe texted Plaintiff.

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

27 15. **Numerosity:** The exact size of the Class is unknown and unavailable to
28

1 Plaintiff at this time, but it is clear that individual joinder is impracticable. On information
2 and belief, Defendant sent unsolicited text messages to thousands of individuals who fall
3 into the Class definition. Class membership can be easily determined from Defendant's
4 records.

5 16. **Typicality:** Plaintiff's claims are typical of the claims of the other members
6 of the Class. Plaintiff is a member of the Class, and if Defendant violated the TCPA with
7 respect to Plaintiff, then it violated the TCPA with respect to the other members of the
8 Class. Plaintiff and the Class sustained the same damages as a result of Defendant's
9 uniform wrongful conduct.

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

- 14 a) How Defendant gathered, compiled, or obtained the telephone
15 numbers of Plaintiff and the Class;
16 b) Whether the text messages were sent using an automatic telephone
17 dialing system;
18 c) Whether Defendant sent some or all of the text messages without the
19 consent of Plaintiff and the Class; and
20 d) Whether Defendant's conduct was willful and knowing such that
21 Plaintiff and the Class are entitled to treble damages.

22 18. **Adequate Representation:** Plaintiff will fairly and adequately represent and
23 protect the interests of the Class and has retained counsel competent and experienced in
24 complex class actions. Plaintiff has no interest antagonistic to those of the Class, and
25 Defendant has no defenses unique to Plaintiff.

26 19. **Policies Generally Applicable to the Class:** This class action is appropriate
27 for certification because Defendant has acted or refused to act on grounds generally
28 applicable to the Class as a whole, thereby requiring the Court's imposition of uniform

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