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5 *Attorneys for Plaintiff*
6 *and the Proposed Class*

7
8
9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11
12 BRITTANY COVELL, individually and on
behalf of all others similarly situated

13 Plaintiff,

14 v.

15 AMAZING LASH STUDIO FRANCHISE
16 LLC and DOES 1-100, inclusive,

17 Defendant.

Case No. '19CV1613 BEN WVG
CLASS ACTION COMPLAINT

[DEMAND FOR JURY TRIAL]

1 Plaintiff Brittany Covell brings this action on behalf of herself and all others
2 similarly situated against Defendant Amazing Lash Studio Franchise LLC and Does 1
3 through 100 and states:

4 **NATURE OF THE ACTION**

5 1. Defendant Amazing Lash Studio Franchise LLC (“Lash Studio”) obtained its
6 customers’ cellular telephone number through its website and in its retail locations. Lash
7 Studio then sent marketing messages to its customers via text without obtaining their prior
8 express written consent. Lash Studio did not provide adequate disclosures about its
9 telemarketing messages. After acquiring its customers’ information, including cellular
10 telephone numbers, Defendant repeatedly and intentionally violated the Telephone
11 Consumer Protection Act, 47 U.S.C. § 227 (“TCPA”), and 47 C.F.R. § 64.1200 by sending
12 marketing and advertising messages to its customers’ cell phone via SMS texting.

13 2. Congress was prompted to pass the TCPA due to “[v]oluminous consumer
14 complaints about abuses of telephone technology—for example, computerized calls
15 dispatched to private homes” *Mims v. Arrow Fin. Servs., LLC*, 132 S.Ct. 740, 744
16 (2012). The TCPA was designed to prevent calls and messages like the ones described
17 within this Complaint, and to protect the privacy of citizens like Plaintiff.

18 3. In enacting the TCPA, Congress intended to give consumers a choice as to
19 how telemarketers and creditors can contact them, and made specific findings that
20 “residential telephone subscribers consider automated or prerecorded telephone calls,
21 regardless of the content or the initiator of the message, to be a nuisance and an invasion
22 of privacy.” TCPA, Pub. L. No. 102–243, § 2 (10), 105 Stat. 2394 (1991). And since
23 “[t]echnologies that might allow consumers to avoid receiving such calls are not
24 universally available, are costly, are unlikely to be enforced, or place an inordinate burden
25 on the consumer,” then “[b]anning such automated or prerecorded telephone calls to the
26 home, except when the receiving party consents to receiving the call or when such calls are
27 necessary in an emergency situation . . . is the only effective means of protecting telephone
28 consumers from this nuisance and privacy invasion.” *Id.* §§ 2(11)-(12), 105 Stat. 2394-95.

1 4. The Ninth Circuit has held that under the TCPA, it is “unlawful ‘to make any
2 call’ using an [automatic telephone dialing system],” and “[w]hile the TCPA does not
3 define ‘call,’ the FCC has explicitly stated that the TCPA’s prohibition on ATDSs
4 ‘encompasses both voice calls and text calls to wireless numbers including, for example,
5 short message service (SMS) calls” *Satterfield v. Simon & Schuster, Inc.*, 569 F.3d
6 946, 952 (9th Cir. 2009) (*quoting In re Rules and Regulations Implementing the Tel.*
7 *Consumer Prot. Act of 1991*, Report and Order, 18 FCC Rcd. 14014, 14115 (July 3, 2003)).
8 Therefore, “a text message [SMS message] is a ‘call’ within the meaning of the TCPA.”
9 *Id.*

10 5. An “automatic telephone dialing system” means “equipment which has the
11 capacity—(A) to store or produce telephone numbers to be called, using a random or
12 sequential number generator; and (B) to dial such numbers.” 47 U.S.C. § 227(a)(1). The
13 “clear language of the TCPA ‘mandates that the focus must be on whether the equipment
14 has the capacity to store or produce telephone numbers to be called, using a random or
15 sequential number generator.’” *Meyer v. Portfolio Recovery Assocs., LLC*, 707 F.3d 1036,
16 1043 (9th Cir. 2012) (*quoting Satterfield*, 569 F.3d at 951) (emphasis in original) (internal
17 quotations omitted). The system “need not actually store, produce, or call randomly or
18 sequentially generated telephone numbers, it need only have the capacity to do it.” *Id.*

19 6. Effective October 16, 2013, prior express written consent is required to initiate
20 or cause to be initiated any telephone call (or text) that includes or introduces an
21 advertisement or constitutes telemarketing, using an automatic telephone dialing system to
22 any telephone number assigned to a cellular telephone service. *See* 47 C.F.R. §§
23 64.1200(a)(1)(iii) and (2). Under this regulation, the only instances in which the prior
24 express consent does not need to be in writing are when a call is made for emergency
25 purposes, when a call is made by or on behalf of a tax-exempt nonprofit organization, or
26 when a call that delivers a health care message is made by, or on behalf of, a covered entity
27 or its business associate, as those terms are defined in the HIPAA Privacy Rule. *See* 47
28 C.F.R. §§ 64.1200(a)(2).

1 eyelash extension salon and is the franchisor of over 200 independently owned and
2 operated Lash Studio locations throughout the nation. Defendant markets and sells its
3 products and eyelash extension services to thousands of consumers in California through
4 its locations, on its website, and via marketing text messages. Defendant is, and at all times
5 mentioned herein was, a “person” as that term is defined by 47 U.S.C. § 153(39).

6 13. The true names and capacities, whether individual corporate, associate, or
7 otherwise, of defendants sued herein as a Doe is legally responsible in some manner for
8 the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this
9 Complaint to reflect the true names and capacities of the defendants designated hereinafter
10 as Does when such identities become known.

11 14. Plaintiff is informed and believes, and thereon alleges, that all times material
12 hereto and mentioned herein, each defendant sued herein was the agent, servant, employer,
13 joint venture, partner, subsidiary, parent, division, alias, and/or alter ego of each of the
14 remaining defendants and was, at all times, acting within the purpose and scope of such
15 agency, servitude, employment, ownership, subsidiary, alias, and/or alter ego and with the
16 authority, consent, approval, control, influence, and ratification of each remaining
17 defendant sued herein.

18 **FACTUAL ALLEGATIONS**

19 15. On several occasions, Plaintiff visited the Lash Studio located at in La Costa
20 Town Square, 3457 Via Montebello Suite 152, Carlsbad, California 92009 to receive an
21 eyelash extension service.

22 16. On one occasion, Plaintiff was required to input her personal information,
23 including her cell phone number into Defendant’s point of sale registry.

24 17. Plaintiff did not provide express written consent to receive Defendant’s SMS
25 text message marketing and advertisement messages.

26 18. Between October 12, 2018 and March 25, 2019 Plaintiff received several
27 advertising and marketing SMS text messages on her personal cell phone. For instance,
28 the advertising and marketing SMS text message Plaintiff received on October 12, 2018

1 read:

2 Want Full Luxurious Lashes? Don't miss our HALLOWEEN Special!
3 FREE Volume Upgrade (\$65 Value) w/Our Intro Offer of \$89.99 for
4 Full Set of Lashes. <http://bit.ly/BookOnlineLC> Amazing Lash Studio
La Costa 760-452-4522 Reply STOP to stop msgs.

5 19. On each relevant occasion alleged herein, Plaintiff received SMS text
6 messages from Defendant that included similar advertising and marketing content as that
7 alleged above.

8 **The Delivery Restrictions On Telemarketing Require Prior Express Written**
9 **Consent Before Sending Marketing Text Messages to Cellular Telephones**

10 20. On October 16, 2013, the amendments to 47 C.F.R. § 64.1200(a)(2) became
11 effective. The regulation now requires express written consent before a text message
12 introducing an advertisement or other telemarketing is sent, it states:

13 No person or entity may: . . . Initiate, or cause to be initiated, any telephone
14 call that includes or introduces an advertisement or constitutes telemarketing,
15 using an automatic telephone dialing system or an artificial or prerecorded
16 voice, to any of the lines or telephone numbers described in paragraphs
17 (a)(1)(i) through (iii) of this section, other than a call made with the *prior*
18 *express written consent* of the called party or the prior express consent of the
19 called party when the call is made by or on behalf of a tax-exempt nonprofit
organization, or a call that delivers a "health care" message made by, or on
20 behalf of, a "covered entity" or its business associate," as those terms are
defined in the HIPAA Privacy Rule, 45 CFR 160.13.

21 47 C.F.R. § 64.1200(a)(2), effective October 16, 2013 (emphasis added).

22 21. Defendant cannot send SMS text messages containing advertisements or
23 which constitute telemarketing to its customers' cell phones. Paragraphs (a)(1)(i) through
24 (iii) of 47 C.F.R. § 64.1200 read as follows:

25 No person or entity may: (1) Except as provided in paragraph (a)(2) of this
26 section, initiate any telephone call (*other than a call made for emergency*
27 *purposes* or is made with the prior express consent of the called party) using
an automatic telephone dialing system or an artificial or prerecorded voice:

28 ///

- 1 (i) To any emergency telephone line, including any 911 line and any
2 emergency line of a hospital, medical physician or service office, health
3 care facility, poison control center, or fire protection or law
4 enforcement agency;
- 5 (ii) To the telephone line of any guest room or patient room of a hospital,
6 health care facility, elderly home, or similar establishment; or
- 7 (iii) To any telephone number assigned to a paging service, *cellular*
8 *telephone service*, specialized mobile radio service, or other radio
9 common carrier service, or any service for which the called party is
10 charged for the call.

11 47 C.F.R. § 64.1200(a)(1)(i) through (iii) (emphasis added).

12 22. Defendant does not acquire express written consent from its customers prior
13 to sending the offending SMS text messages. According to 47 C.F.R. § 64.1200(f)(8):

14 As used in this section: . . . The term prior express written consent means *an*
15 *agreement, in writing, bearing the signature of the person called* that clearly
16 authorizes the seller to deliver or cause to be delivered to the person called
17 advertisements or telemarketing messages using an automatic telephone
18 dialing system or an artificial or prerecorded voice, and the telephone number
19 to which the signatory authorizes such advertisements or telemarketing
20 messages to be delivered.

21 (i) The written agreement shall include a *clear and conspicuous*
22 *disclosure* informing the person signing that:

23 (A) By executing the agreement, such person authorizes the seller to
24 deliver or cause to be delivered to the signatory telemarketing calls
25 using an automatic telephone dialing system or an artificial or
26 prerecorded voice; and

27 (B) The person is not required to sign the agreement (directly or
28 indirectly), or agree to enter into such an agreement as a condition
of purchasing any property, goods, or services.

(ii) The term “signature” shall include an electronic or digital form of
signature, to the extent that such form of signature, to the extent that
such form of signature is recognized as a valid signature under
applicable federal law or state contract law.

1
2 47 C.F.R. § 64.1200(f)(8) (emphasis added).

3 23. As indicated by 47 C.F.R. § 64.1200(a)(1)(iii), Defendant’s texts using an
4 automatic telephone dialing system to the cellular telephones belonging to Plaintiff and the
5 Class are covered by this regulation.

6 24. As stated by 47 C.F.R. § 64.1200(a)(1) and the amendments to 47 C.F.R. §
7 64.1200(a)(2), Defendant is required to obtain prior express written consent before sending
8 texts using an automatic telephone dialing system to the cellular telephones belonging to
9 Plaintiff and the Class because Defendant does not send its texts for emergency purposes,
10 it is not a tax-exempt nonprofit organization, and it does not deliver health care messages
11 to customers as a covered entity or a business associate under HIPAA.

12 25. As stated by 47 C.F.R. § 64.1200(f)(8), prior express written consent means
13 “an agreement, in writing, bearing the signature of the person called.” The agreement must
14 contain a “clear and conspicuous disclosure” informing the signatory that she is authorizing
15 the seller to deliver telemarketing calls using an automatic telephone dialing system and
16 that she is not required to sign the agreement as a condition of making a purchase from the
17 seller. Defendant has not met any of these requirements—there are no disclosures regarding
18 the texts on Defendant’s website or in its privacy policy, and Plaintiff and the Class have
19 not provided their signatures, whether in hard copy, electronically, or digitally, to
20 Defendant. There is no “clear and conspicuous” disclosure.

21 26. In direct disregard of these regulations, Defendant sent text messages to
22 Plaintiff and putative Class members. Plaintiff did not provide her prior express written
23 consent to Defendant to receive these texts.

24 **Defendant’s Website And Privacy Policy Demonstrate It Does Not Receive**
25 **Prior Express Written Consent Before Sending Marketing Texts To Its**
26 **Customers**

27 27. Defendant’s website indicates that it does not obtain prior express written
28 consent before sending promotions and updates via email and text to customers. On its

1 homepage, a customer has an option to “Request Appoint” and receive the “Intro Offer”
2 by entering her name, email address, phone number, service, and selecting her preferred
3 contact method.

4 28. This is not at all sufficient to establish the prior express written consent
5 required by the amendment of 47 C.F.R. § 64.1200(a)(2). There is no place on the website
6 in which customers must enter their signature, and there are no clear and conspicuous
7 disclosures informing customers that the texts will be made using an automatic telephone
8 dialing system introducing advertisements and/or for telemarketing purposes.

9 29. Likewise, Defendant’s privacy policy (“Policy”) indicates that it does not
10 obtain prior express written consent before sending marketing texts to its customers. The
11 Policy states that it “applies only to information collected by Amazing Lash Studio online:
12 and that by “us[ing] our Site or Service, certain areas or features may require you to provide
13 personal information.” For example, “[i]f you request an appointment at an independently
14 owned and operated Amazing Lash Studio franchised location, [Defendant] collect[s] your
15 name, email address, phone number, and information about your desired appointment;”
16 “[i]f you make a purchase through the Services, [Defendant] will collect your payment
17 information, including your phone number and billing and shipping information;” and if
18 you contact Defendant in general, it will “request your name [and] contact information.”
19 Defendant might also “collect information from third parties” and will “automatically
20 collect the following information about your use of our Site or Services through cookies,
21 web beacons, and other technologies.” The Policy further states that “[u]sers who make a
22 purchase will receive a number of emails throughout the transaction process and they may
23 sometimes receive phone calls from our Customer Service department to ensure smooth
24 transactions.” Defendant “may also occasionally send out service-related announcements,
25 for instance, if our service is temporarily suspended for maintenance” and “generally, *these*
26 *communications are not promotional in nature*, and users will receive them as long as
27 their accounts are open” (emphasis added). The Policy provides that Defendant will use
28 customers’ information in part “[f]or marketing and promotional purposes,” such as, “to

1 send you news and newsletters, special offers, and promotions, or to otherwise contact you
2 about products or information we think may interest you.”

3 30. While this Policy may be sufficient to establish prior express consent, it is not
4 adequate to establish prior express written consent. There are no clear and conspicuous
5 disclosures in the Policy informing customers that the texts will be made using an
6 automatic telephone dialing system and that they are not required to sign the agreement as
7 a condition of making a purchase from the seller.

8 **CLASS ACTION ALLEGATIONS**

9 31. This lawsuit is brought on behalf of Plaintiff and all others similarly situated
10 pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) to recover the maximum
11 statutory penalties permitted by 47 U.S.C. § 227(b)(3)(B) and/or 47 U.S.C. § 227(b)(3)(C)
12 for Defendant’s repeated violations of the TCPA and 47 C.F.R. § 64.1200 as alleged herein.
13 Plaintiff seeks certification of the following Class:

14 All consumers who received a text message which includes or introduces an
15 advertisement or constitutes telemarketing from Defendant from four years
16 prior to the filing of the Complaint in this matter to the present, which text
17 message was not made for emergency purposes, was not made by a tax-
18 exempt nonprofit organization, did not deliver a health care message, or was
19 not made with the recipient’s prior express written consent.

20 32. Excluded from the Class definition are Defendant, its corporate parents,
21 subsidiaries and affiliates, officers and directors, and any entity in which Defendant has a
22 controlling interest, and the legal representatives, successors, or assigns of any such
23 excluded persons or entities. Further excluded are Plaintiff’s counsel and the assigned
24 Judge and the Judge’s family.

25 33. Plaintiff and members of the Class were harmed by the acts of Defendant in
26 at least the following ways: Defendant, either directly or through its agents, illegally
27 contacted Plaintiff and the Class members via their cellular telephones by using an
28 automatic telephone dialing system to send marketing text messages, thereby causing
Plaintiff and the Class members to incur certain cellular charges or reduce cellular

1 telephone time for which Plaintiff and the Class members previously paid, and in so doing,
2 Defendant invaded the privacy of, inconvenienced and damaged Plaintiff and the Class
3 members.

4 34. This suit seeks only damages for recovery of economic injury on behalf of the
5 Class and injunctive relief to halt Defendant's illegal practices alleged herein, and it
6 expressly is not intended to request any recovery for personal injury and claims related
7 thereto. Plaintiff reserves the right to expand the Class definition to seek recovery on behalf
8 of additional persons as warranted as facts are learned through further investigation and
9 discovery.

10 35. **Numerosity.** The members of this Class are so numerous that joinder of all
11 members is impracticable. While the exact number of Class members is unknown to
12 Plaintiff at this time, Plaintiff is informed and believes, and on that basis alleges, that the
13 proposed Class contains hundreds if not thousands of members.

14 36. **Existence and Predominance of Common Questions of Law and Fact.** The
15 common questions of law and fact, which arise from Lash Studio's uniform pattern and
16 practice of prohibited conduct, exist as to all members of the Class and predominate over
17 questions affecting only individual Class members. The common legal and factual
18 questions include, but are not limited to the following:

- 19 a. Whether each Class member provided written consent to receive
20 advertising or telemarketing texts from Lash Studio;
- 21 b. Whether Lash Studio sent advertising or telemarketing text messages to its
22 customers' cellular telephone lines via an automatic telephone dialing
23 system or an artificial or prerecorded voice;
- 24 c. Whether such texts were for commercial purposes;
- 25 d. Whether such texts were for commercial purposes but did not include or
26 introduce an advertisement or constitute telemarketing;
- 27 e. Whether such texts were for emergency purposes;
- 28 f. Whether Lash Studio is a tax-exempt nonprofit organization;

- 1 g. Whether Lash Studio is a “covered entity” or “business associate” as those
- 2 terms are defined in the HIPAA Privacy Rule, 45 C.F.R. § 160.103;
- 3 h. Whether the texts sent by Defendant were for the purpose of delivering a
- 4 “health care” message as that term is defined in the HIPAA Privacy Rule,
- 5 45 C.F.R. § 160.103;
- 6 i. Whether Defendant’s text messages to its customers violate the TCPA (47
- 7 U.S.C. § 227) and 47 C.F.R. § 64.1200;
- 8 j. Whether Class Members are entitled to statutory damages afforded under
- 9 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C); and
- 10 k. Whether Class Members are entitled to attorneys’ fees under Cal. Code of
- 11 Civ. Proc. § 1021.5.

12 37. **Typicality.** The claims asserted by Plaintiff in this action are typical of the
13 claims of the members of the Class, as the claims arise from the same course of conduct by
14 Defendant, and the relief sought is common. Plaintiff received at least one marketing text
15 message from Defendant without providing prior express written consent to Defendant,
16 and therefore, Plaintiff, like every other Class member, was exposed to virtually identical
17 conduct and is entitled to civil penalties in amounts of \$500.00 up to \$1,500.00 per
18 occurrence/violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

19 38. **Adequacy of Representation.** Plaintiff will fairly and adequately represent
20 and protect the interests of the members of the Class, and she has no conflict of interest
21 with other Class members. Plaintiff has also retained experienced counsel who are
22 competent in multi-party, class, and civil litigation. Plaintiff seeks on behalf of herself and
23 the entire Class, on grounds generally applicable to the entire class: a determination of
24 liability; declaratory relief; and the maximum statutory penalty permitted by 47 U.S.C. §
25 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

26 39. **Superiority.** A class action is superior to other available methods for the fair
27 and efficient adjudication of this controversy because the likelihood of individual Class
28 members prosecuting separate claims is remote, and individual Class members do not have

1 a significant interest in individually controlling the prosecution of separate actions. In this
2 action, the statutory damages to which each individual Class member is entitled are
3 relatively small, and the expense and burden of individual litigation would make it
4 impracticable for proposed Class members to prosecute their claims individually. It would
5 thus be virtually impossible for the Class, on an individual basis, to obtain effective redress
6 for the wrongs done to them, thereby allowing Defendant's unlawful conduct to continue
7 unabated. Furthermore, even if Class members could afford such individualized litigation,
8 the court system could not: individualized litigation would create the danger of inconsistent
9 or contradictory judgments arising from the same set of facts, and it would increase the
10 delay and expense to all parties and the court system from the issues raised by this action.
11 By contrast, the class-action device provides the benefits of adjudication of these issues in
12 a single proceeding, uniformity of decision, and comprehensive supervision by a single
13 court, and it presents no unusual management difficulties under the circumstances here.

14 **FIRST CAUSE OF ACTION**

15 **Knowing and/or Willful Violations of the Telephone Consumer Protection Act**

16 **47 U.S.C. § 227, et seq.**

17 40. Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as through fully stated herein.

19 41. The foregoing acts and omissions of Defendant constitute numerous and
20 multiple knowing and/or willful violations of the TCPA, including but not limited to each
21 and every one of the above-cited provisions of 47 U.S.C. § 227.

22 42. Here, Defendant either directly or through its agents, knowingly and/or
23 willfully contacted Plaintiff and Class members via their cellular telephones through an
24 automatic telephone dialing system to place advertising and/or telemarketing texts.
25 Defendant knew or should have known that none of the texts were/are exempt under 47
26 U.S.C. § 227(b)(2)(B) or 47 C.F.R. §§ 64.1200(a)(2) or (a)(3). Therefore, Defendant knew
27 that it was required to obtain prior express written consent under 47 C.F.R. §§
28 64.1200(a)(2) and (a)(3) prior to sending these advertising and/or telemarketing texts. Yet
Defendant did not and does not obtain prior express written consent or even prior express

1 consent (under 47 U.S.C. §§ 227(b)(1)(A)(iii) and (b)(1)(B)). Therefore, Defendant has
2 committed and continues to commit knowing and/or willful violations of the TCPA.

3 43. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. §
4 227, Plaintiff and the Class are entitled to an award of \$1,500.00 in statutory damages for
5 each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and (b)(3)(C).

6 44. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
7 such conduct in the future.

8 **SECOND CAUSE OF ACTION**
9 **Negligent Violations of the Telephone Consumer Protection Act**
10 **47 U.S.C. § 227, et seq.**

11 45. Plaintiff incorporates by reference all of the above paragraphs of this
12 Complaint as though fully stated herein.

13 46. The foregoing acts and omissions of Defendant constitute numerous and
14 multiple negligent violations of the TCPA, including but not limited to, each and every one
15 of the above-cited provisions of 47 U.S.C. § 227.

16 47. Here, if the Court does not find that Defendant's violations of the TCPA were
17 knowing and/or willful, then the Court should find that Defendant negligently violated the
18 TCPA. Defendant, either directly or through its agents, contacted Plaintiff and the Class
19 members via their cellular telephones through an automatic telephone dialing system to
20 place advertising and/or telemarketing texts. None of the texts were/are exempt under 47
21 U.S.C. § 227(b)(2)(B) or 47 C.F.R. §§ 64.1200(a)(2) or (a)(3). Yet Defendant did not and
22 does not obtain prior express written consent (under 47 C.F.R. §§ 64.1200(a)(2) and (a)(3))
23 prior to sending these texts. Therefore, Defendant has violated and continues to violate the
24 TCPA.

25 48. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff and the
26 Class are entitled to an award of \$500.00 in statutory damages for each and every violation,
27 pursuant to 47 U.S.C. § 227(b)(3)(B).

28 49. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting
such conduct in the future.

1 **THIRD CAUSE OF ACTION**
2 **Violations of Restrictions on Telemarketing and Telephone Solicitation**
3 **47 C.F.R. § 64.1200**

4 50. Plaintiff incorporates by reference all of the above paragraphs of this
5 Complaint as though fully stated herein.

6 51. The amendments to 47 C.F.R. § 64.1200(a)(2), which became effective on
7 October 16, 2013, require that Defendant obtain prior express written consent before
8 sending texts using an automatic telephone dialing system to the cellular telephones
9 belonging to Plaintiff and the Class because Defendant does not send its texts for
10 emergency purposes, is not a tax-exempt nonprofit organization, and does not deliver
11 health care messages to customers as a covered entity or business associate under HIPAA.

12 52. Prior express written consent must constitute “an agreement, in writing,
13 bearing the signature of the person called,” with a “clear and conspicuous disclosure”
14 informing the signatory that she is authorizing the seller to deliver telemarketing calls using
15 an automatic telephone dialing system and that she is not required to sign the agreement as
16 a condition of making a purchase from the seller. *See* 47 C.F.R. § 64.1200(f)(8). There are
17 no disclosures regarding the texts on Defendant’s website or in its privacy policy, and
18 Plaintiff and the Class have not provided their signatures, whether in hard copy,
19 electronically, or digitally, to Defendant.

20 53. Therefore, Defendant has violated 47 C.F.R. § 64.1200, and Plaintiff and the
21 Class are entitled to an award of \$500.00 to \$1,500.00 in statutory damages for each and
22 every violation, pursuant to 47 U.S.C. §§ 227(b)(3)(B) and (b)(3)(C).

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for a judgment as follows:

- 25 A. Certifying this case as a class action to afford the putative class members the
26 procedural benefit of the class-action device and to avoid the multiplicity of
27 individual actions;
28

- 1 B. Certifying Plaintiff the class representative and her attorneys, Todd D.
2 Carpenter and Carlson Lynch Sweet Kilpela & Carpenter, LLP, as Counsel
3 for the Class;
- 4 C. Awarding Plaintiff and the Class members the maximum statutory penalty
5 permissible pursuant to 47 U.S.C. § 227(b)(3)(B) and/or 47 U.S.C. §
6 227(b)(3)(C);
- 7 D. A declaration of the rights and liabilities of the parties;
- 8 E. Injunctive relief enjoining Defendant from committing further violations of
9 law as alleged herein;
- 10 F. Awarding Plaintiff and the Class members pre-judgment and post-judgment
11 interest according to California law;
- 12 G. Awarding Plaintiff and Class members attorney's fees and costs; and
- 13 H. Awarding Plaintiff and Class members any such other and further relief as
14 may be appropriate.

15
16 Dated: August 26, 2019

CARLSON LYNCH, LLP

17
18 /s/ Todd D. Carpenter

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JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

<p>I. (a) PLAINTIFFS</p> <p>BRITTANY COVELL, individually and on behalf of all others similarly situated</p> <p>(b) County of Residence of First Listed Plaintiff <u>San Diego</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i></p> <p>Todd D. Carpenter (CA 234464), Carlson Lynch 1350 Columbia St. Ste. 603, Tel: (619) 762-1900</p>	<p>DEFENDANTS</p> <p>AMAZING LASH STUDIO FRANCHISE LLC</p> <p>County of Residence of First Listed Defendant <u>Maricopa</u> <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i> '19CV1613 BEN WVG</p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:25%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:55%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td style="text-align: center;"><input type="checkbox"/> 4</td> <td style="text-align: center;"><input checked="" type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> <td style="text-align: center;"><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> <td style="text-align: center;"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT <i>(Place an "X" in One Box Only)</i>		Click here for: Nature of Suit Code Descriptions.			
<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance</p> <p><input type="checkbox"/> 120 Marine</p> <p><input type="checkbox"/> 130 Miller Act</p> <p><input type="checkbox"/> 140 Negotiable Instrument</p> <p><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment</p> <p><input type="checkbox"/> 151 Medicare Act</p> <p><input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i></p> <p><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits</p> <p><input type="checkbox"/> 160 Stockholders' Suits</p> <p><input type="checkbox"/> 190 Other Contract</p> <p><input type="checkbox"/> 195 Contract Product Liability</p> <p><input type="checkbox"/> 196 Franchise</p>	<p>TORTS</p> <p>PERSONAL INJURY</p> <p><input type="checkbox"/> 310 Airplane</p> <p><input type="checkbox"/> 315 Airplane Product Liability</p> <p><input type="checkbox"/> 320 Assault, Libel & Slander</p> <p><input type="checkbox"/> 330 Federal Employers' Liability</p> <p><input type="checkbox"/> 340 Marine</p> <p><input type="checkbox"/> 345 Marine Product Liability</p> <p><input type="checkbox"/> 350 Motor Vehicle</p> <p><input type="checkbox"/> 355 Motor Vehicle Product Liability</p> <p><input type="checkbox"/> 360 Other Personal Injury</p> <p><input type="checkbox"/> 362 Personal Injury - Medical Malpractice</p>	<p>PERSONAL INJURY</p> <p><input type="checkbox"/> 365 Personal Injury - Product Liability</p> <p><input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability</p> <p><input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY</p> <p><input type="checkbox"/> 370 Other Fraud</p> <p><input type="checkbox"/> 371 Truth in Lending</p> <p><input type="checkbox"/> 380 Other Personal Property Damage</p> <p><input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881</p> <p><input type="checkbox"/> 690 Other</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 422 Appeal 28 USC 158</p> <p><input type="checkbox"/> 423 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyrights</p> <p><input type="checkbox"/> 830 Patent</p> <p><input type="checkbox"/> 835 Patent - Abbreviated New Drug Application</p> <p><input type="checkbox"/> 840 Trademark</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act</p> <p><input type="checkbox"/> 720 Labor/Management Relations</p> <p><input type="checkbox"/> 740 Railway Labor Act</p> <p><input type="checkbox"/> 751 Family and Medical Leave Act</p> <p><input type="checkbox"/> 790 Other Labor Litigation</p> <p><input type="checkbox"/> 791 Employee Retirement Income Security Act</p> <p>IMMIGRATION</p> <p><input type="checkbox"/> 462 Naturalization Application</p> <p><input type="checkbox"/> 465 Other Immigration Actions</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 375 False Claims Act</p> <p><input type="checkbox"/> 376 Qui Tam (31 USC 3729(a))</p> <p><input type="checkbox"/> 400 State Reapportionment</p> <p><input type="checkbox"/> 410 Antitrust</p> <p><input type="checkbox"/> 430 Banks and Banking</p> <p><input type="checkbox"/> 450 Commerce</p> <p><input type="checkbox"/> 460 Deportation</p> <p><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations</p> <p><input type="checkbox"/> 480 Consumer Credit</p> <p><input type="checkbox"/> 490 Cable/Sat TV</p> <p><input type="checkbox"/> 850 Securities/Commodities/Exchange</p> <p><input checked="" type="checkbox"/> 890 Other Statutory Actions</p> <p><input type="checkbox"/> 891 Agricultural Acts</p> <p><input type="checkbox"/> 893 Environmental Matters</p> <p><input type="checkbox"/> 895 Freedom of Information Act</p> <p><input type="checkbox"/> 896 Arbitration</p> <p><input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision</p> <p><input type="checkbox"/> 950 Constitutionality of State Statutes</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation</p> <p><input type="checkbox"/> 220 Foreclosure</p> <p><input type="checkbox"/> 230 Rent Lease & Ejectment</p> <p><input type="checkbox"/> 240 Torts to Land</p> <p><input type="checkbox"/> 245 Tort Product Liability</p> <p><input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 440 Other Civil Rights</p> <p><input type="checkbox"/> 441 Voting</p> <p><input type="checkbox"/> 442 Employment</p> <p><input type="checkbox"/> 443 Housing/Accommodations</p> <p><input type="checkbox"/> 445 Amer. w/Disabilities - Employment</p> <p><input type="checkbox"/> 446 Amer. w/Disabilities - Other</p> <p><input type="checkbox"/> 448 Education</p>	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <p><input type="checkbox"/> 463 Alien Detainee</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence</p> <p><input type="checkbox"/> 530 General</p> <p><input type="checkbox"/> 535 Death Penalty</p> <p>Other:</p> <p><input type="checkbox"/> 540 Mandamus & Other</p> <p><input type="checkbox"/> 550 Civil Rights</p> <p><input type="checkbox"/> 555 Prison Condition</p> <p><input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement</p>	<p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)</p> <p><input type="checkbox"/> 871 IRS—Third Party 26 USC 7609</p>		

V. ORIGIN *(Place an "X" in One Box Only)*

1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation - Transfer 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
47 U.S.C. Sec. 227 & 47 C.F.R. Sec. 64.1200

Brief description of cause:
Violation of the Telephone Consumer Protection Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000 + CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):* JUDGE _____ DOCKET NUMBER _____

DATE 8.26.2019 SIGNATURE OF ATTORNEY OF RECORD /s/ Todd D. Carpenter

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____