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15  
16 **UNITED STATES DISTRICT COURT**  
17 **DISTRICT OF ARIZONA**

18 ED HASSEN, individually and on behalf  
19 of a class of similarly situated individuals,

20 Plaintiff,

21 v.

22 TRYKE COMPANIES, LLC, an Arizona  
23 limited liability company,

24 Defendant.  
25

Case No.

**CLASS ACTION COMPLAINT**

Jury Trial Demanded

26  
27 Plaintiff, Ed Hassen, brings this Class Action Complaint and Demand for Jury Trial against  
28 Defendant, Tryke Companies, LLC, to stop Defendant from unlawfully sending unsolicited,

1 automated text message advertisements to consumers’ cellphones and to obtain redress for all  
2 persons harmed by Defendant’s misconduct. Plaintiff, for his Class Action Complaint, alleges as  
3 follows based on personal knowledge as to himself and his own acts and experiences, and as to  
4 all other matters, on information and belief, including an investigation conducted by his attorneys.  
5

6 **NATURE OF THE ACTION**  
7

8 1. Defendant owns and operates a chain of marijuana dispensaries located in Nevada  
9 and Arizona, which do business under the name “Reef Dispensaries.”

10 2. In a misguided attempt to promote its marijuana dispensaries and cannabis products,  
11 Defendant has engaged in an invasive and unlawful form of marketing: sending unsolicited  
12 advertisements *en masse* to consumers’ cellphones through automated “spam” text message calls.  
13

14 3. By making these unsolicited, automated text message calls, Defendant has violated  
15 the Telephone Consumer Protection Act (the “TCPA”), 47 U.S.C. § 227 *et seq.*, as well as  
16 consumers’ privacy rights.  
17

18 4. The TCPA and its implementing regulations, 47 C.F.R. § 64.1200, *et seq.*,  
19 specifically prohibit companies such as Defendant from sending advertisements to consumers  
20 through automated text message calls without first obtaining written consent from the messages’  
21 recipients.  
22

23 5. Defendant’s conduct has thus caused actual, concrete harm to Plaintiff and other  
24 consumers, not only because they were subjected to the aggravation and invasion of privacy that  
25 necessarily accompanies unsolicited, automated text messages – particularly text messages  
26 containing unsolicited advertisements – but also because consumers like Plaintiff frequently have  
27  
28

1 to pay their cellphone service providers for the receipt of such text messages, even though the  
2 messages were sent without authorization and in violation of federal law.

3  
4 6. In order to redress these injuries, Plaintiff, on his own behalf and on behalf of a  
5 nationwide class defined below, brings suit against Defendant under the TCPA, which protects  
6 individuals' privacy rights and the right to be free from receiving unsolicited voice and text calls  
7 to cellular phones.

8  
9 7. On his own behalf and on behalf of the members of a putative class defined below,  
10 Plaintiff seeks injunctive relief and an award of statutory damages, together with costs and  
11 reasonable attorneys' fees.

12  
13 **JURISDICTION AND VENUE**

14 8. This Court has federal question subject matter jurisdiction over this matter pursuant  
15 to 28 U.S.C. § 1331, because Plaintiff's claims arise under federal law, namely, the Telephone  
16 Consumer Protection Act, 47 U.S.C. § 227, *et seq.*

17  
18 9. Venue is proper in this District pursuant to 28 U.S.C. §1391(b), because Defendant  
19 resides in this District, and because a substantial part of the events or omissions giving rise to  
20 Plaintiff's claims occurred in this District, as Plaintiff received unauthorized text messages from  
21 within this District.

22  
23 10. This Court has personal jurisdiction over Defendant, because Defendant is a  
24 corporation organized under the laws of Arizona and headquartered within Arizona. Further,  
25 Plaintiff's claims arise out of Defendant's unlawful in-state actions, and Defendant does business  
26 within Arizona such that it has sufficient minimum contacts with Arizona and/or has purposely  
27  
28

1 availed itself of Arizona markets to make it reasonable under the U.S. Constitution for this Court  
2 to exercise personal jurisdiction over Defendant.  
3

4 **PARTIES**

5 11. Plaintiff, Ed Hassen, is a natural person and a resident of Nevada.

6 12. Defendant, Tryke Companies, LLC, is an Arizona limited liability company doing  
7 business under the name “Reef Dispensary” and “Reef Dispensaries.” Defendant is engaged in  
8 business as a cultivator and producer of marijuana and other cannabis products, and it sells  
9 medical and recreational cannabis products at retail through a network of Reef Dispensary stores  
10 located in Nevada and Arizona.  
11  
12

13 **COMMON ALLEGATIONS OF FACT**

14 **Background**

15 13. A relatively inexpensive type of marketing involves advertising through Short  
16 Message Services. The term “Short Message Services” or “SMS” describes a messaging system  
17 that allows cellphone subscribers to use their cellphones to send and receive short text messages,  
18 usually limited to 160 characters.  
19

20 14. An “SMS message” is a text message call directed to a wireless device through the  
21 use of the telephone number assigned to the device. When an SMS message call is received, the  
22 recipient’s cellphone rings or makes a sound, alerting the recipient that a text message call has  
23 been received.  
24  
25

26 15. SMS calls, and particularly automated spam text messages, are unlike more  
27 conventional advertisements, because they are forced to the recipient’s personal cellphone,  
28

1 creating an annoying and aggravating interruption that is distracting, wastes the recipient’s time,  
2 and invades the recipient’s privacy.

3  
4 16. Moreover, in contrast to regular forms of advertising that are paid for solely by the  
5 advertiser, SMS calls can actually cost their recipients money, because cellphone users like  
6 Plaintiff have to pay their respective wireless service providers either for each text message call  
7 they receive, incur a usage allocation deduction to their text messaging plan, or pay a fixed or  
8 variable usage fee, regardless of whether or not the message was authorized.

9  
10 17. Accordingly, Congress enacted the TCPA to prevent unsolicited advertising calls to  
11 consumers’ cellphones. “Voluminous consumer complaints about abuses of telephone technology  
12 – for example, computerized calls dispatched to private homes – prompted Congress to pass the  
13 TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).

14  
15 18. Congressional committees investigating the use of telecommunications technology  
16 found that legislation was necessary to prevent abusive telemarketing practices and protect  
17 consumers from invasions of privacy, harassment, and economic harm. The Senate Committee on  
18 Commerce, Science, and Transportation found that “the Federal Communications Commission  
19 (FCC) received over 2,300 complaints about telemarketing calls” in the year preceding the  
20 TCPA’s passage, stating *inter alia* that “unsolicited calls placed to . . . cellular . . . telephone  
21 numbers often impose a cost on the called party (. . . [where, e.g.] cellular users must pay for each  
22 incoming call . . .).” *See* S. Report No. 102-178, 1991 U.S.C.C.A.N. 1968, 1991 WL 211220 at  
23 \*2 (Oct. 8, 1991). The House Committee on Energy and Commerce concurred, finding that  
24 “expert testimony, data, and legal analyses comprising the Committee’s record, and broad support  
25  
26  
27  
28

1 of consumers, state regulators, and privacy advocates clearly evidence that unsolicited commercial  
2 telemarketing calls are a widespread problem and a federal regulatory solution is needed to protect  
3 residential telephone subscriber privacy rights.” H.R. Report No. 102-317, 1991 WL 245201 at  
4 \*18 (Nov. 15, 1991).

6 19. When it passed the TCPA, Congress intended to provide consumers a choice as to  
7 how telemarketers may call them and found that “[t]echnologies that might allow consumers to  
8 avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or  
9 place an inordinate burden on the consumer.” Pub. L. No. 102–243, § 11. Congress also found  
10 that “[m]any consumers are outraged over the proliferation of intrusive, nuisance calls,” and that  
11 “the evidence presented to the Congress indicates that automated or prerecorded calls are a  
12 nuisance and an invasion of privacy . . . .” *Id.* §§ 12-13.

15 20. The TCPA’s ban on unsolicited automated calls has been interpreted to extend to  
16 automated text messages sent to cellular phones. *See, e.g., In re Rules & Regulations*  
17 *Implementing the Telephone Consumer Protection Act of 1991*, 27 F.C.C.R. 15391, 2012 WL  
18 5986338 (Nov. 29, 2012); *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 667 (2016); *Satterfield*  
19 *v. Simon & Schuster, Inc.*, 569 F.3d 946, 953-54 (9th Cir. 2009).

### 22 **Allegations Specific to Plaintiff**

23 21. Defendant cultivates and produces marijuana and other cannabis products, and sells  
24 medical and recreational cannabis products through a network of Reef Dispensary retail stores  
25 located in Nevada and Arizona.

27 22. One of the ways Defendant promotes its products and services is through SMS text  
28

1 message advertisements sent to individual consumers' cellphones.

2 23. However, Defendant often fails to ensure that the recipients of its messages have  
3 provided prior express written consent as required under the TCPA.  
4

5 24. Beginning at least as early as August 2018, and continuing thereafter, Defendant  
6 began transmitting automated text message advertisements to the cellphones of those whom it  
7 hoped would be potential customers of its Reef Dispensary stores.  
8

9 25. For instance, on August 31, 2018, at 9:44 AM, Plaintiff's cellphones rang, indicating  
10 that a text message call was being received. The "from" field of the message was identified as  
11 "(317) 561-4779," which is a longcode—a specialized telephone number utilized by Defendant  
12 and/or its agents for the transmission of automated text messages *en masse*.  
13

14 26. The text message that Plaintiff received on August 31st appears below in Figure 1.  
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26  
27 **(Figure 1).**

28 27. On September 20, 2018, at 11:47 AM, Defendant sent Plaintiff a second text

1 message from the longcode “(518) 244-8898,” another longcode operated by Defendant and/or its  
2 agents.

3  
4 28. The text message that Plaintiff received on September 20th appears below in Figure  
5 2.



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18 **(Figure 2).**

19 29. As seen in Figures 1 and 2 above, the scripts of the automated text messages that  
20 Plaintiff received were generic and non-personalized. The text messages did not refer to Plaintiff  
21 by name, nor did they include his phone number or any other personally identifying information.  
22 Rather, the contents of the automated text messages Plaintiff received were the same as the  
23 contents of the many other automated messages Defendant sent to other recipients.  
24  
25

26 30. Defendant controlled, designed, and determined the content of the text messages  
27 reproduced above.  
28





1 complex litigation and class actions. Plaintiff and his counsel are committed to vigorously  
2 prosecuting this action on behalf of the other members of the Class, and have the financial  
3 resources to do so. Neither Plaintiff nor his counsel has any interest adverse to those of the other  
4 members of the Class.  
5

6 37. Plaintiff's claims are typical of the claims of the other members of the Class in that  
7 the factual and legal bases of Defendant's liability to Plaintiff and to the other members of the  
8 Class are the same. Plaintiff and the other members of the Class have all suffered harm and  
9 damages as a result of Defendant's unlawful and wrongful conduct.  
10

11 38. There are many questions of law and fact common to the claims of Plaintiff and the  
12 other members of the Class, and those questions predominate over any questions that may affect  
13 individual members of the Class. Common questions for the Class include, but are not limited to,  
14 the following:  
15  
16

- 17 (a) Did Defendant and/or its agents send one or more text message advertisements to  
18 members of the Class?  
19  
20 (b) Did Defendant and/or its agents use an automatic telephone dialing system to  
21 transmit the text message advertisements at issue?  
22  
23 (c) Did Defendant transmit text message advertisements to persons who did not provide  
24 Defendant with prior express written consent to receive such messages?  
25  
26 (d) Did the unauthorized text messages distributed by Defendant violate the TCPA?  
27  
28 (e) Are Plaintiff and the members of the Class are entitled to damages and injunctive  
relief?



1 numbers that included Plaintiff's and the other Class members' cellphone numbers.

2 44. Defendant's text message calls constitute advertising under 47 C.F.R.  
3 § 64.1200(f)(1) and telemarketing under § 64.1200(f)(12), because Defendant's text messages  
4 advertise the commercial availability of its cannabis goods and services, and because Defendant  
5 sent these messages for the purpose of encouraging the called parties to purchase property, goods,  
6 and services from Reef Dispensary retail stores.  
7

8  
9 45. Defendant failed to obtain express written consent from Plaintiff and the other  
10 members of the Class before sending the messages at issue.  
11

12 46. Defendant has, therefore, violated the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii).

13 47. As a result of Defendant's illegal conduct, Plaintiff and the Class members have had  
14 their privacy rights violated, have suffered actual and statutory damages, and, under  
15 § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500.00 in damages for each such  
16 violation of the TCPA.  
17

18  
19 48. To the extent Defendant knew or should have known that the Class members did  
20 not provide prior express written consent to be sent the wireless spam at issue, the Court should,  
21 pursuant to section 227(b)(3)(C), treble the amount of statutory damages recoverable by Plaintiff  
22 and the Class members.  
23

24 **REQUEST FOR RELIEF**

25 WHEREFORE, Plaintiff, on his own behalf and on behalf of the Class, prays for the  
26 following relief:  
27

28 A. An order certifying the Class defined above;



**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

**Civil Cover Sheet**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the District of Arizona.

**The completed cover sheet must be printed directly to PDF and filed as an attachment to the Complaint or Notice of Removal.**

**Plaintiff**  
(s): **Ed Hassen**

County of Residence: Outside the State of Arizona

County Where Claim For Relief Arose: Outside the State of Arizona

Plaintiff's Atty(s):

**Scott I Palumbo  
Palumbo Wolfe & Palumbo  
2800 N. Central Ave., Suite 1400  
Phoenix, Arizona 85004  
602-265-5777**

**Defendant**  
(s): **Tryke Companies, LLC**

County of Residence: Maricopa

Defendant's Atty(s):

II. Basis of Jurisdiction:      **4. Diversity (complete item III)**

III. Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff:- **2 Citizen of Another State**  
Defendant:- **4 AZ corp or Principal place of Bus. in AZ**

IV. Origin :      **1. Original Proceeding**

V. Nature of Suit:      **890 Other Statutory Actions**

VI.Cause of Action:      **Telephone Consumer Protection Act, 47 U.S.C. Section 227**

VII. Requested in Complaint

Class Action: **Yes**

Dollar Demand:  
Jury Demand: **Yes**

VIII. This case is not related to another case.

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**Signature: Scott I. Palumbo**

**Date: 11-01-18**

**If any of this information is incorrect, please go back to the Civil Cover Sheet Input form using the *Back* button in your browser and change it. Once correct, save this form as a PDF and include it as an attachment to your case opening documents.**

Revised: 01/2014

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Filed Against Reef Dispensaries Over Alleged Promotional Text Messages](#)

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