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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

KAREN JOHNSON, individually and on
behalf of all others similarly situated,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC., a
Delaware corporation,

Defendant.

Case No.

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

CLASS ACTION COMPLAINT

Plaintiff Karen Johnson (“Johnson” or “Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against Defendant Chipotle Mexican Grill, Inc. (“Chipotle” or “Defendant”) to stop Chipotle from violating the Telephone Consumer Protection Act by sending unsolicited, autodialed text messages to consumers, and to otherwise obtain injunctive and monetary relief for all persons injured by Chipotle’s conduct. Plaintiff, for her Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

INTRODUCTION

1. Chipotle runs a chain of restaurants throughout the US.¹
2. Part of Chipotle’s marketing plan includes sending text messages *en masse* to consumers regarding promotions and other incentives that are meant to bring consumers into Chipotle’s restaurants.

¹ https://en.wikipedia.org/wiki/Chipotle_Mexican_Grill

COMMON ALLEGATIONS

Chipotle Sends Unsolicited Text Messages Using an Autodialer

10. Chipotle operates shortcode 888222 which it uses to send out text messages to its consumer base:



888222.

- 4. If you would like to be removed from the Chipotle mobile text program, you must text STOP to 888222 (U.S.) or 888333 (Canada) to opt-out. This is the exclusive method for opting out. After texting STOP to 888222 you will receive one additional message confirming that your request has been processed.
- 5. Chipotle reserves the right to remove subscribers from our messaging database at our discretion. For more information, reply "HELP" to 888222 (U.S.) or 888333 (Canada) or contact us here.

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11. Chipotle is open about the fact that it sends text messages using an autodialer. In its Terms of Use, Chipotle provides the following consent language:

- 2. By participating in the Chipotle mobile text program and signing up for mobile offers and text updates, you consent to receive future recurring automated marketing text messages to the mobile number provided from or on behalf of Chipotle. You also acknowledge that your agreement to receive these messages isn't required as a condition of purchase.

3

12. In sending the unsolicited text messages at issue, Defendant, or a third party acting on its behalf, used an automatic telephone dialing system; hardware and/or software with the capacity to store or produce cellular telephone numbers to be called, using a random or sequential number generator, and/or to call numbers from pre-loaded lists. This is evident from the circumstances surrounding the text messages, including the ability to trigger an automated response by replying "Y," the text messages' commercial and generic content, that they were

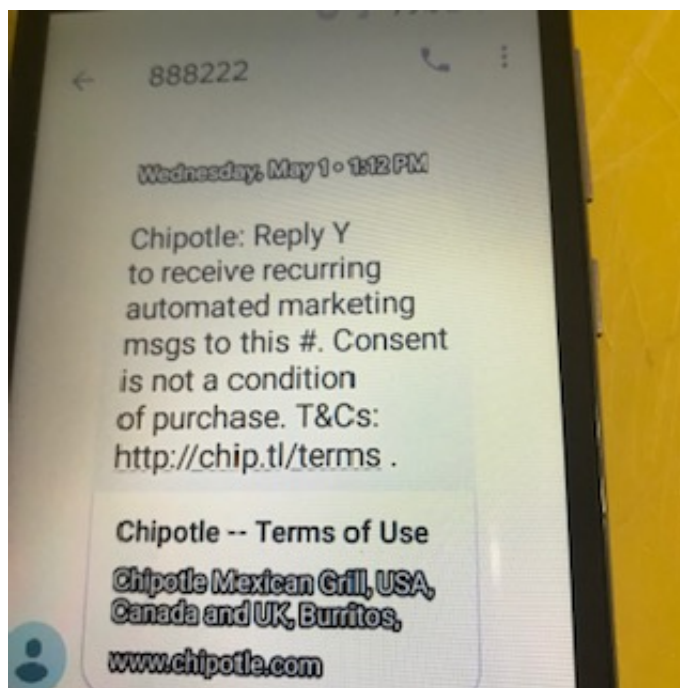
² <https://www.chipotle.com/about-us/terms-of-use.html>

³ <https://Chipotle.com/>

1 sent without consent, and that they were sent from a short code, which is consistent with the use
2 of an automatic telephone dialing system to send text messages.

3 **Plaintiff Received an Unsolicited Autodialed Text Message to**
4 **Her Cell Phone**

5 13. On May 1, 2019 at 1:12 PM, Plaintiff Johnson received an autodialed text
6 message on her cell phone from Defendant using shortcode 888222:



18 14. Plaintiff believes this text message is autodialed and sent *en masse* because the
19 text message is impersonal in nature, is sent by a short code, and instructs the recipient to interact
20 with it in a way one would interact with an automated program, and even references their
21 intention to send her automated marketing text messages like the text message at issue.
22

23 15. Plaintiff has never given Chipotle consent to send automated text messages to her.

24 16. The unauthorized text message that was sent by Chipotle, as alleged herein,
25 harmed Plaintiff in the form of annoyance, nuisance, and invasion of privacy, and disturbed
26

1 Johnson's use and enjoyment of her cellular phone, in addition to the wear and tear on the
2 phone's hardware (including the phone's battery) and the consumption of memory on the phone.

3 17. Seeking redress for these injuries, Johnson, on behalf of herself and a Class of
4 similarly situated individuals, brings suit under the Telephone Consumer Protection Act, 47
5 U.S.C. § 227, *et seq.*, which prohibits unsolicited autodialed text messages to cellular telephones.

6 CLASS ALLEGATIONS

7 **Class Treatment Is Appropriate for Plaintiff's TCPA Claim**

8
9 18. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(2)
10 and Rule 23(b)(3) on behalf of herself and all others similarly situated and seeks certification of
11 the following Class:

12 **Autodialed No Consent Class:** All persons in the United States who from four
13 years prior to the filing of this action through class certification (1) Defendant (or
14 an agent acting on behalf of Defendant) text messaged, (2) on the person's cellular
15 telephone number, (3) using a text messaging platform substantially similar to the
16 text messaging platform Defendant used to text message Plaintiff, (4) for whom
17 Defendant claims (a) it obtained prior express consent in the same manner as
18 Defendant claims it supposedly obtained prior express consent to text message
19 Plaintiff, or (b) it did not obtain prior express consent.

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

1 20. **Numerosity:** On information and belief, there are hundreds, if not thousands of
2 members of the Class such that joinder of all members is impracticable.

3 21. **Commonality and Predominance:** There are many questions of law and fact
4 common to the claims of Plaintiff and the Class, and those questions predominate over any
5 questions that may affect individual members of the Class. Common questions for the Class
6 include, but are not necessarily limited to the following:

- 7 (a) whether Defendant used an automatic telephone dialing system to send text
8 messages to Plaintiff and the members of the Autodialed No Consent Class;
9 (b) whether Defendant's conduct constitutes a violation of the TCPA; and
10 (c) whether members of the Class are entitled to treble damages based on the
11 willfulness of Defendant's conduct.

12 22. **Adequate Representation:** Plaintiff will fairly and adequately represent and
13 protect the interests of the Class, and has retained counsel competent and experienced in class
14 actions. Plaintiff has no interests antagonistic to those of the Class, and Defendant has no
15 defenses unique to Plaintiff. Plaintiff and her counsel are committed to vigorously prosecuting
16 this action on behalf of the members of the Class, and have the financial resources to do so.
17 Neither Plaintiff nor her counsel has any interest adverse to the Class.

18 23. **Appropriateness:** This class action is also appropriate for certification because
19 Defendant has acted or refused to act on grounds generally applicable to the Class and as a
20 whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards
21 of conduct toward the members of the Class and making final class-wide injunctive relief
22 appropriate. Defendant's business practices apply to and affect the members of the Class
23 uniformly, and Plaintiff's challenge of those practices hinges on Defendant's conduct with
24 respect to the Class, not on facts or law applicable only to Plaintiff. Additionally, the damages
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1 suffered by individual members of the Class will likely be small relative to the burden and
2 expense of individual prosecution of the complex litigation necessitated by Defendant's actions.
3 Thus, it would be virtually impossible for the members of the Class to obtain effective relief
4 from Defendant's misconduct on an individual basis. A class action provides the benefits of
5 single adjudication, economies of scale, and comprehensive supervision by a single court.

6
7 **FIRST CAUSE OF ACTION**
8 **Telephone Consumer Protection Act**
9 **(Violations of 47 U.S.C. § 227)**
10 **(On Behalf of Plaintiff and the Autodial No Consent Class)**

11 24. Plaintiff repeats and realleges paragraphs 1 through 23 of this Complaint and
12 incorporates them by reference.

13 25. Defendant and/or its agents sent unwanted solicitation text messages to cellular
14 telephone numbers belonging to Plaintiff and the other members of the Autodialed No Consent
15 Class using an autodialer.

16 26. These solicitation text messages were sent *en masse* without the consent of the
17 Plaintiff and the other members of the Autodialed No Consent Class to receive such solicitation
18 text messages.

19 27. Defendant's conduct was negligent, wilful, or knowing.

20 28. Defendant has, therefore, violated 47 U.S.C. § 227(b)(1)(A)(iii). As a result of
21 Defendant's conduct, Plaintiff and the other members of the Autodialed No Consent Class are
22 each entitled to between \$500 and \$1,500 for each and every text message.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Johnson, individually and on behalf of the Class, prays for the following relief:

- a) An order certifying the Class as defined above, and appointing Plaintiff as the representative of the Class and her attorneys as Class Counsel;
- b) An award of actual and/or statutory damages and costs;
- c) An order declaring that Defendant’s actions, as set out above, violate the TCPA;
- d) An injunction requiring Defendant to cease all unsolicited texting activity, and to otherwise protect the interests of the Class; and
- e) Such further and other relief as the Court deems just and proper.

JURY DEMAND

Plaintiff Johnson requests a jury trial.

Respectfully Submitted,

KAREN JOHNSON, individually and on behalf of those similarly situated individuals

Dated: June 18, 2019

By: /s/ David Ratner
David S. Ratner, Esq.
David Ratner Law Firm, LLP
33 Julianne Court
Walnut Creek, CA 94595

Rachel Kaufman
rachel@kaufmanpa.com
KAUFMAN P.A.
400 NW 26th Street
Miami, FL 33127
Telephone: (305) 469-5881

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

KAREN JOHNSON, individually and on behalf of all
(b) County of Residence of First Listed Plaintiff Contra Costa Countv.
(EXCEPT IN U.S. PLAINTIFF CASES)
(c) Attorneys (Firm Name, Address, and Telephone Number)
David S. Ratner, Esq., David Ratner Law Firm, LLP, 33
Julianne Court

DEFENDANTS

CHIPOTLE MEXICAN GRILL, INC., a Delaware
County of Residence of First Listed Defendant Los Angeles, CA
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.
Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

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. § 227
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, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE June 18, 2019

SIGNATURE OF ATTORNEY OF RECORD

s/ David S. Ratner

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Chipotle Hit with TCPA Class Action Over Alleged Automated Text Messages](#)
