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19 UNITED STATES DISTRICT COURT
20 DISTRICT OF NEVADA

21 ERIN ROBERTSON, on behalf of herself
and others similarly situated,

22 Plaintiff,

23 v.

24 VIVINT SMART HOME, INC., a Delaware
25 corporation.

26 Defendant.

Case No.

COMPLAINT – CLASS ACTION

DEMAND FOR A JURY TRIAL

1 **DECLARATORY AND PERMANENT INJUNCTIVE RELIEF**
2 **AND DAMAGES REQUESTED**

3 Plaintiff, ERIN ROBERTSON (“Plaintiff”), individually and on behalf of all others
4 similarly situated, brings this action against Defendant, VIVINT SMART HOME, INC.
5 (“Defendant”) pursuant to the private right of action provision in the Telephone Consumer
6 Protection Act (the “TCPA”), 47 U.S.C. § 227(c)(5). On personal knowledge, investigation of
7 counsel, and on information and belief, Plaintiff alleges as follows:

8 **NATURE OF ACTION**

9 1. In April and May 2024 Defendant sent over twenty telemarketing text messages
10 and initiated multiple telemarketing calls to Plaintiff’s personal cellular telephone for the purpose
11 of selling its products to Plaintiff. Defendant sent such text messages and initiated calls despite
12 Plaintiff having registered her telephone number on the national do-not-call registry a year prior
13 in 2023, and without Plaintiff’s prior express written consent.

14 2. Plaintiff brings this action for injunctive relief and statutory damages arising out of
15 and relating to Defendant’s conduct in negligently, knowingly, and/or willfully initiating more
16 than one telemarketing telephone call/text message within a 12-month period to Plaintiff and class
17 members on their residential telephone lines which have been registered on the national do-not-
18 call registry, without prior express consent in violation of 47 U.S.C. § 227(c) and 47 C.F.R.
19 § 64.1200(c)(2).

20 **PARTIES**

21 3. Plaintiff is an individual residing in Reno, Washoe County, Nevada.

22 4. Defendant is a for-profit corporation organized under the laws of Delaware with a
23 principal place of business located at 4931 North 300 West, Provo, Utah 84604.

24 **JURISDICTION AND VENUE**

25 5. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 because
26 Plaintiff brings this action pursuant to 47 U.S.C. § 227 *et seq.*

27 6. This Court has personal jurisdiction over Defendant because Defendant
28 purposefully availed itself to the Nevada marketplace by directing its telemarketing messages and

1 calls to Nevada and to Plaintiff's cellular telephone, which is located in Nevada where Plaintiff
2 resides.

3 7. Venue is proper pursuant to 28 U.S.C. § 1391(b) because the telemarketing calls
4 and texts that are the subject of this lawsuit were made to Plaintiff while she was a resident of and
5 present in this District.

6 **TCPA BACKGROUND**

7 8. In 1991, Congress enacted the TCPA to regulate the explosive growth of the
8 telemarketing industry. In so doing, Congress recognized that “[u]nrestricted telemarketing . . .
9 can be an intrusive invasion of privacy [.]” Telephone Consumer Protection Act of 1991, Pub. L.
10 No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).

11 **A. The National Do-Not-Call Registry**

12 9. 47 U.S.C. § 227(c) of the TCPA requires the Federal Communications Commission
13 (“FCC”) to “initiate a rulemaking proceeding concerning the need to protect residential telephone
14 subscribers’ privacy rights to avoid receiving telephone solicitations to which they object.” 47
15 U.S.C. § 227(c)(1).

16 10. The national do-not-call registry allows consumers to register their telephone
17 numbers and thereby indicate their desire not to receive telephone solicitations at those numbers.
18 *See* 47 C.F.R. § 64.1200(c)(2).

19 11. A listing on the Registry “must be honored indefinitely, or until the registration is
20 cancelled by the consumer or the telephone number is removed by the database administrator.” *Id.*

21 12. The TCPA and implementing regulations prohibit the initiation of telephone
22 solicitations to residential telephone subscribers to the national do-not-call registry and provides a
23 private right of action against any entity that makes those calls, or “on whose behalf” such calls
24 are made. 47 U.S.C. § 227(c)(5); 47 C.F.R. § 64.1200(c)(2).

25 13. The FCC has issued rulings clarifying that in order to obtain an individual’s
26 consent, a clear, unambiguous, and conspicuous written disclosure must be provided by the
27 individual. 2012 FCC Order, 27 FCC Rcd. at 1839 (“[R]equiring prior written consent will better
28 protect consumer privacy because such consent requires conspicuous action by the consumer—

1 providing permission in writing—to authorize autodialed or prerecorded telemarketing calls. . .
2 .”).

3 **FACTUAL ALLEGATIONS**

4 14. Defendant is a “person” as the term is defined by 47 U.S.C. § 153(39).

5 15. Defendant is a for-profit corporation and provider of smart home technology and
6 security solutions. In addition to selling home security systems and smart home automation
7 products, Vivint also offers installation and 24/7 monitoring services.

8 16. At no point has Plaintiff sought out or solicited information regarding Defendant’s
9 products or services prior to receiving the telemarketing text messages at issue.

10 17. Plaintiff has never consented in writing, or otherwise, to receive telemarketing calls
11 or text messages from Defendant. Plaintiff has never provided Defendant with her telephone
12 number.

13 18. Plaintiff’s cellular telephone number, 775-XXX-4337, is a residential telephone
14 line.

15 19. Plaintiff registered this telephone number on the national do-not-call registry in
16 2023.

17 20. Despite this, Plaintiff received twenty-one (21) telemarketing text messages and six
18 (6) telemarketing calls from Defendant between April 27, 2024 and May 22, 2024. *See* Ex. A.

19 21. The calls and text messages marketed Defendant’s home security systems, home
20 automation options, and various products including cameras, lights, and temperature controls. The
21 text messages also included promotional offers for new customers such as free installation for a
22 limited time, free or discounted doorbell cameras, gift cards, several months of monitoring
23 services, or Memorial Day Savings sales on home security equipment. Most of the text messages
24 asked Plaintiff to respond with her availability for a call or attempted to connect Plaintiff with a
25 Vivint “specialist.”

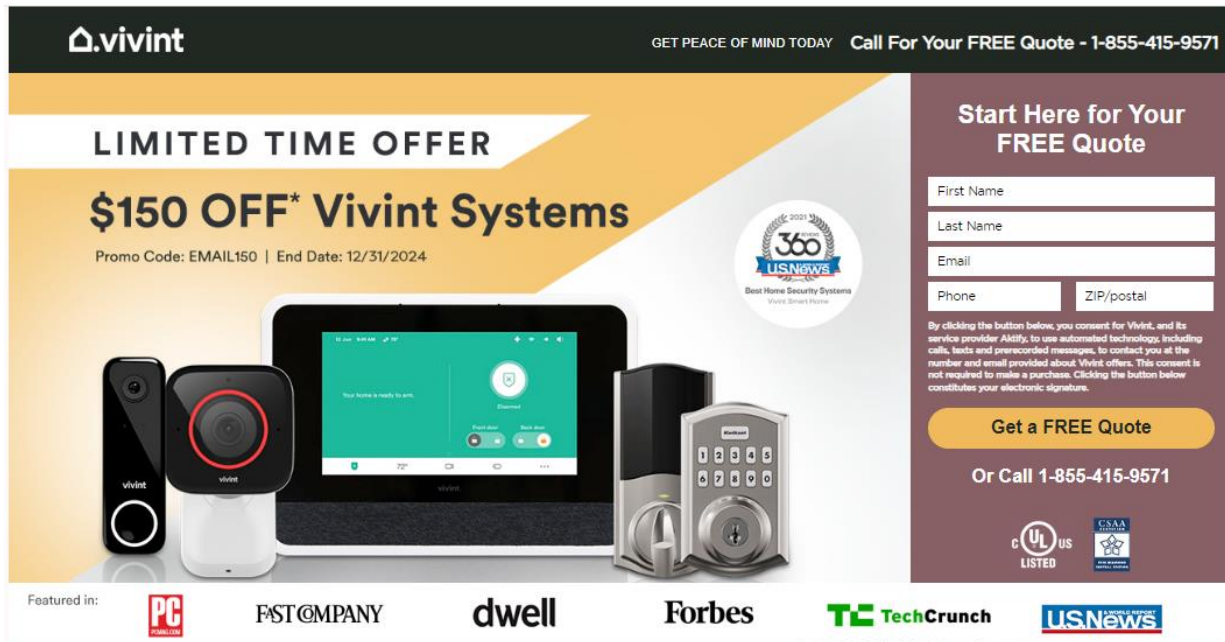
26 22. Plaintiff alleges direct liability because Defendant was the entity that sent the text
27 messages and initiated calls to Plaintiff.

1 23. In pre-litigation communications with Defendant, Defendant disclosed that Vivint
2 purportedly obtained Plaintiff’s phone number from a “lead” submission from the following
3 website: www.vivintoffers.com.

4 24. To be clear, Plaintiff never visited that website, and did not provide her phone
5 number or consent in any manner to Defendant through that website or otherwise. The “lead”
6 information Defendant produced contains a third-party name for a person that Plaintiff does not
7 know and has no association with, an email that is not Plaintiff’s, and an address in Keller, Virginia,
8 where Plaintiff does not and has never resided and has no association with.

9 25. Moreover, any putative “consent” Defendant may have obtained for other putative
10 class members from the website www.vivintoffers.com is not valid prior express written consent
11 under the TCPA.

12 26. A screen-capture of the web form as it appears when accessed from a browser on a
13 personal computer follows:



26 ///
27 ///
28 ///

27. A vastly zoomed in version of the web form is depicted below:

**Start Here for Your
FREE Quote**

First Name

Last Name

Email

Phone ZIP/postal

By clicking the button below, you consent for Vivint, and its service provider Aktify, to use automated technology, including calls, texts and prerecorded messages, to contact you at the number and email provided about Vivint offers. This consent is not required to make a purchase. Clicking the button below constitutes your electronic signature.

Get a FREE Quote

Or Call 1-855-415-9571

UL LISTED

GSAA REGISTERED

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1 28. A screen-capture of the web form as it appears when accessed from a mobile
2 browser follows:

3

4 **Start Here for Your**

5 **FREE Quote**

6 First Name

7 Last Name

8 Email

9 Phone



10 ZIP/postal

11 **Get a FREE Quote**

12 **Click to Call 1-855-415-9571**

13 By clicking the button above, you consent for Vivint, and its service provider Aktify, to use automated technology, including calls, texts and prerecorded messages, to contact you at the number and email provided about Vivint offers. This consent is not required to make a purchase. Clicking the button below constitutes your electronic signature.

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17 **Month-to-Month Pricing Available**

18 **You May Save on Your**

19 **Homeowners Insurance**

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1 29. Both versions of Defendant’s web form fail to provide requisite disclosures in a
2 clear and conspicuous manner, do not put consumers on inquiry notice, and do not require
3 consumers to unambiguously consent to receive telemarketing calls. The consent language is not
4 prominently displayed and easily understandable to the consumer. Defendant employs small font
5 and a color scheme that are intentionally designed so that consumers never notice or read the text.
6 For the mobile version, the text appears *below* the button (“Get a FREE Quote”) that the consumer
7 needs to press to purportedly consent to the language, and, further, the consumer would have no
8 reason to keep scrolling on their phone past the Get a Free Quote button to ever see the text in the
9 first place. Further, Defendant’s disclosure does not contain the word, “marketing” or
10 “solicitation” anywhere and there is no indication the consumer is about to consent to a barrage of
11 telemarketing calls and text messages.

12 30. Both versions of Defendant’s web form do not require users to check a separate box
13 or utilize another opt-in mechanism specifically indicating an affirmative choice to provide
14 consent to telemarketing calls and text messages.

15 31. Both versions of Defendant’s web form fail to disclose the consumer’s right to
16 revoke consent at any time, and they lack instructions for how to revoke such consent and opt out
17 of telemarketing calls and text messages. Without such disclosures, the text is not valid consent
18 under the TCPA and the E-SIGN Act as a matter of law. *Mantha v. Quotewizard.com, LLC*, 2021
19 WL 6061919, at *8-9 (D. Mass. Dec. 13, 2021) (“[T]o be TCPA compliant, a consumer’s consent
20 to receive solicitations from a seller must comply with the E-SIGN Act ... Accordingly, even
21 assuming plaintiff had visited the website, no reasonable jury would ... be able to find plaintiff’s
22 consent valid where the disclosure on the consent form did not contain those required under 15
23 U.S.C. § 7001(c) and 47 C.F.R. § 64.1200(f)(9).”); *Bradley v. DentalPlans.com*, 2024 WL
24 2865075, at *9 (D. Md. June 6, 2024) (finding that the “consumer disclosure” section of the E-
25 SIGN Act applies to telemarketing claims under the TCPA).

26 32. Both versions of Defendant’s web form fail to be contextually relevant, and are
27 intentionally misleading. The web form and adjacent marketing language suggests to a user that
28 he or she is simply requesting a free quote for a home security system *online*. Consumers are given

1 seemingly two options, they can click “Get a FREE Quote” and get a quote online, *or* they can
2 click or dial the number in large, bold, prominent text right after that button stating “Click to Call
3 1-855-415-9571” (on mobile) or dial the phone number as instructed on the desktop version “Or
4 Call 1-855-415-9571.” Getting a quote online and getting a quote via phone are presented as
5 alternatives. A reasonable consumer under the circumstances would not believe that clicking “Get
6 a FREE Quote” would lead to telemarketing texts and calls and not a quote online (as Defendant
7 does not provide quotes online at all). If a consumer wanted to have a call to receive a quote, they
8 would have chosen the other clear option.

9 33. Defendant’s website does not provide an option for a consumer to simply obtain a
10 quote without purportedly “consenting” to telemarketing.

11 34. For the above reasons, any putative class member who visited Defendant’s website
12 and requested an instant quote via Defendant’s web form did not provide valid consent to
13 Defendant’s subsequent telemarketing calls and text messages.

14 35. Plaintiff and all members of the class defined below have been harmed by the acts
15 of Defendant because their privacy has been violated and they were subjected to annoying and
16 harassing calls that constitute a nuisance. The calls also occupied Plaintiff’s and class members’
17 telephone lines, used up their time, and prevented them from receiving legitimate communications.

18 **CLASS ACTION ALLEGATIONS**

19 36. As authorized by Fed. R. Civ. P. 23(b)(2) or (b)(3), Plaintiff bring this action on
20 behalf of a national class of all other persons or entities similarly situated throughout the United
21 States.

22 37. Plaintiff proposes the following “National Do-Not-Call Registry Class” definition,
23 subject to amendment as appropriate:

24 **National Do-Not-Call Registry Class:** All persons in the United
25 States whose numbers are listed on the national do-not-call registry,
26 and who received two or more telemarketing calls or text messages
27 within any 12-month period from Defendant or its agent to their
28 residential telephone number 31 or more days after the telephone
number was listed on the national do-not-call registry at any time in
the period that begins four years before the filing of the complaint

1 in this action to the date that class notice is disseminated (the “Class
2 Period”).

3 38. Plaintiff represents, and is a member of, the National Do-Not-Call Registry Class.
4 Excluded from the proposed class are Defendant and any entities in which Defendant has a
5 controlling interest, Defendant’s agents and employees, any person who made a transaction with
6 Defendant in the preceding 18 months before receiving a telemarketing call or text message, any
7 person who has executed a valid signed, written agreement between the person and Defendant
8 which states that the person agrees to be contacted by Defendant and includes the telephone
9 number to which the calls may be placed, any Judge and/or Magistrate Judge to whom this action
10 is assigned, and any member of such Judges’ staffs and immediate families.

11 39. **Numerosity.** The potential members of the proposed class likely number at least in
12 the hundreds because of the *en masse* nature of telemarketing calls and text messages. Individual
13 joinder of these persons is impracticable.

14 40. **Existence and predominance of common questions of law and fact.** Plaintiff and
15 all members of the proposed class have been harmed by the acts of Defendant, including, but not
16 limited to, multiple involuntary telephone and electrical charges, the invasion of their privacy,
17 aggravation, annoyance, waste of time, the intrusion on their telephone that occupied it from
18 receiving legitimate communications, and violations of their statutory rights.

19 41. The disposition of the claims in a class action will provide substantial benefit to the
20 parties and the Court in avoiding a multiplicity of identical suits.

21 42. The proposed class, as defined above, is identifiable through telephone records and
22 telephone number databases.

23 43. There are well defined and nearly identical questions of law and fact common to
24 Plaintiff and members of the proposed class. The questions of law and fact involving the class
25 claims predominate over questions which may affect individual members of the proposed class.
26 These common questions of law and fact include, but are not limited to, the following:

- 27 a. whether Defendant systematically made multiple telephone calls and text
28 messages to members of the proposed class;

1 b. whether Defendant made calls and text messages to Plaintiff and members
2 of the proposed class without first obtaining prior express written consent
3 to make the calls/texts; and

4 c. whether members of the proposed class are entitled to treble damages and/or
5 punitive damages based on the willfulness of Defendant's conduct.

6 44. **Typicality.** Plaintiff's claims are typical of the claims of the proposed class
7 members because they arise out of the same common course of conduct by Defendant and are
8 based on the same legal and remedial theories. Specifically, the proposed class members are
9 persons who received telemarketing calls and text messages on their telephones without their prior
10 express written consent. Plaintiff is a member of the proposed class and will fairly and adequately
11 represent and protect the interests of the proposed class as he has no interests that conflict with any
12 of the proposed class members.

13 45. **Adequacy of Representation.** Plaintiff is an adequate representative of the
14 proposed class because her interests do not conflict with the interests of the proposed class, she
15 will fairly and adequately protect the interests of the proposed class, and she is represented by
16 counsel skilled and experienced in class actions, including TCPA class actions.

17 46. **Superiority.** Common questions of law and fact predominate over questions
18 affecting only individual class members, and a class action is the superior method for fair and
19 efficient adjudication of the controversy. The only individual question concerns the identification
20 of class members, which will be ascertainable from records maintained by Defendant.

21 47. A class action is the superior method for the fair and efficient adjudication of this
22 controversy. Class-wide relief is essential to compel Defendant to comply with the TCPA. The
23 interests of individual members of the proposed class in individually controlling the prosecution
24 of separate claims against Defendant are small because the damages in an individual action for
25 violation of the TCPA are small. Management of these claims is likely to present significantly
26 more difficulties than are presented in many class claims. Class treatment is superior to multiple
27 individual suits or piecemeal litigation because it conserves judicial resources, promotes
28

1 consistency and efficiency of adjudication, provides a forum for small claimants, and deters illegal
2 activities. There will be no significant difficulty in the management of this case as a class action.

3 48. Defendant acted on grounds generally applicable to the proposed class, thereby
4 making final injunctive relief and corresponding declaratory relief with respect to the proposed
5 class appropriate on a class-wide basis. Moreover, on information and belief, Plaintiff alleges
6 Defendant's telephone solicitation calls that are complained of herein are substantially likely to
7 continue in the future if an injunction is not entered.

8 **FIRST CAUSE OF ACTION**

9 **Telephone Consumer Protection Act**

10 **Violations of 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)**

11 **(On Behalf of Plaintiff and the National Do-Not-Call Registry Class)**

12 49. Plaintiff repeats her prior allegations of this Complaint from paragraphs 1-48 and
13 incorporates them by reference herein.

14 50. The foregoing acts and omissions of Defendant constitute numerous and multiple
15 violations of the TCPA, by making telemarketing calls and/or text messages, except for emergency
16 purposes, to Plaintiff and members of the National Do-Not-Call Registry Class despite their
17 numbers being on the national do-not-call registry in violation of 47 U.S.C. § 227(c)(5) and 47
18 C.F.R. § 64.1200(c)(2).

19 51. Defendant's violations were willful or knowing.

20 52. As a result of Defendant's violations, Plaintiff and members of the National Do-
21 Not-Call Registry Class are entitled to treble damages of up to \$1,500 for each call and text
22 message made in violation of the TCPA pursuant to 47 U.S.C. § 227(c)(5).

23 53. Plaintiff and the members of the National Do-Not-Call Registry Class are also
24 entitled to and do seek injunctive relief prohibiting Defendant from making telemarketing calls
25 and text messages to telephone numbers registered on the national do-not-call registry, except for
26 emergency purposes, in the future pursuant to 47 U.S.C. § 227(c)(5)(A).

27 54. Plaintiff and members of the proposed National Do-Not-Call Registry Class are
28 also entitled to an award of attorneys' fees and costs.

SECOND CAUSE OF ACTION

Telephone Consumer Protection Act

Violations of 47 U.S.C. § 227(c)(5) & 47 C.F.R. § 64.1200(c)

(On Behalf of Plaintiff and the National Do-Not-Call Registry Class)

55. Plaintiff repeats her prior allegations of this Complaint from paragraphs 1-48 and incorporates them by reference herein.

56. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the TCPA, by making telemarketing calls and/or text messages, except for emergency purposes, to Plaintiff and members of the National Do-Not-Call Registry Class despite their numbers being on the national do-not-call registry in violation of 47 U.S.C. § 227(c)(5) and 47 C.F.R. § 64.1200(c)(2).

57. As a result of Defendant’s violations, Plaintiff and members of the National Do-Not-Call Registry Class are entitled to an award of \$500 in statutory damages for each call and text message made in violation of the TCPA pursuant to 47 U.S.C. § 227(c)(5).

58. Plaintiff and the members of the National Do-Not-Call Registry Class are also entitled to and do seek injunctive relief prohibiting Defendant from making telemarketing calls and text messages to telephone numbers registered on the national do-not-call registry, except for emergency purposes, in the future pursuant to 47 U.S.C. § 227(c)(5)(A).

59. Plaintiff and members of the proposed National Do-Not-Call Registry Class are also entitled to an award of attorneys’ fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the proposed class, prays for the following relief:

- A. Certification of the proposed class;
- B. Appointment of Plaintiff as representative of the class;
- C. Appointment of the undersigned counsel as counsel for the class;
- D. A declaration that Defendant’s actions complained of herein violated the TCPA;

1 E. An order enjoining Defendant from making telemarketing calls and text messages
2 to numbers on the national do-not-call registry, absent an emergency circumstance;

3 F. An award to Plaintiff and the Classes of damages, as allowed by law;

4 G. An award of attorneys fees, expenses, and costs; and

5 H. Orders granting such other and further relief as the Court deems necessary, just,
6 and proper.

7 **JURY DEMAND**

8 Plaintiff requests a jury trial on all issues so triable.

9 DATED: this 26th day of August, 2024.

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10 /s/ Craig K. Perry

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